



# AGENDA REPORT

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**TO:** Mayor Libby Schaaf, City Council  
President Rebecca Kaplan and the  
Honorable City Council

**FROM:** Regina Jackson, Chair  
Oakland Police Commission

**SUBJECT:** Police Commission Annual Report 2019

**DATE:** April 11, 2019

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## **RECOMMENDATION**

**It is recommended that the City Council accept the following April 11, 2019 Police Commission Annual Report.**

## **EXECUTIVE SUMMARY**

The Oakland Police Commission (the “Police Commission” or the “Commission”), authorized by Measure LL in the November 2016 election is a civilian oversight board that oversees the policies, practices and customs of the Oakland Police Department (“OPD”) to meet national standards of constitutional policing. The Police Commission oversees the Community Police Review Agency (“CPRA”) that investigates complaints of police misconduct and recommends cases for discipline. The Police Commission is also charged with, *inter alia*, conducting performance reviews of the CPRA Executive Director and Chief of the OPD. The Police Commission is comprised of seven commissioners and two alternate commissioners.

Oakland City Council Ordinance 13498 C.M.S. (the “Enabling Ordinance”), Section 2.45.220 provides in pertinent part that the Commission “shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council’s confirmation of the first group of Commissioners and alternates.” The Police Commission submits this document as its first annual written report.

## **BACKGROUND / LEGISLATIVE HISTORY**

On November 8, 2016, the citizens of the City of Oakland voted to approve Measure LL thereby creating a civilian Police Commission to oversee OPD’s policies and practices and CPRA’s investigations of police misconduct complaints. Measure LL granted the Mayor authority to appoint three regular members and one alternate member to the Police Commission. Additionally, a Selection Panel comprised of members of the public, appoint four regular members and one alternate member.

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At its meeting of October 17, 2017, the City Council approved the Mayor's and Selection Panel's first group of appointments to serve on the Police Commission.

## **ANALYSIS AND ANNUAL REPORT**

As of the date of this Annual Report, the Police Commission has been in existence for approximately sixteen months.

### **1. POLICE COMMISSION STRUCTURE**

#### **a. Police Commissioner Roster**

<b>Commissioner</b>	<b>Term Ending and Appointed By</b>
Regina Jackson, Chair	Oct. 2021, Mayoral Appointee
Ginale Harris, Vice Chair	Oct. 2020, Selection Committee Appointee
Mubarak Ahmad, Commissioner	Oct. 2019, Selection Committee Appointee
Tara Anderson, Commissioner	Oct. 2020, Selection Committee Appointee
Jose Dorado, Commissioner	Oct. 2021, Selection Committee Appointee
Edwin Prather, Commissioner	Oct. 2019, Mayoral Appointee
Thomas Lloyd Smith, Commissioner	Oct. 2020, Mayoral Appointee
Chris Brown, Alternate Commissioner	Oct. 2020, Mayoral Appointee
<b>Commissioners Having Resigned and Month of Resignation</b>	<b>Appointed By</b>
Mike Nisperos, Former Commissioner Oct. 2018	Selection Committee Appointee
Andrea Dooley, Former Alternate Commissioner Dec. 2018	Mayoral Appointee
Maureen Benson, Former Commissioner Feb. 2019	Selection Committee Appointee

### **b. Police Commission Leadership**

Since its inception in 2017, the Police Commission conducted separate elections for the positions of Chairperson and Vice Chairperson. First in December 2017, the Commission elected Thomas Lloyd Smith to the position of Interim Chairperson and Ginale Harris to the position of Interim Vice Chairperson. In February 2018, the Commission elected Commissioner Smith to the position of Chairperson and Commissioner Harris to the position of Vice Chairperson. In February 2019, Regina Jackson was elected to the position of Chairperson. In March 2019, Commissioner Chair was re-elected to the position of Vice Chairperson.

As such, the Police Commission is currently led by Chairperson, Regina Jackson, and Vice Chairperson, Ginale Harris.

The Commission's elections of the positions of Chairperson and Vice Chairperson comport with Section 2.45.170 of the Enabling Ordinance.

### **c. Police Commission Procedures**

In January 2018, the Commission adopted rules and procedures for conducting business in conformance with Section 2.45.040 of the Enabling Ordinance. In October 2018, the Commission adopted a social media policy involving the use of Twitter, Facebook and other social media platforms.

### **d. Training and Education of Commissioners and Alternate Commissioners**

Starting in December 2017, the Commission identified and planned for training required by Section 2.45.190 of the Enabling Ordinance. More specifically, Section 2.45.190 requires that, *inter alia*, all Commissioners and Alternate Commissioners receive training in the following areas:

Become familiar with City Charter Section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code; Receive training in basic principles of constitutional due process and administrative hearing procedures; Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information; Receive briefing on the Negotiated Settlement Agreement in the case of *Delphine Allen, et at. v. City of Oakland*, and all related court orders for so long as they remain in effect; Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement; Receive training in the legal requirements of California's Political Reform Act (Cal. Government Code § 81000, *et seq.*), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Government Code § 54950, *et seq.*), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Government Code § 6250, *et seq.*); Receive training in open session in

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the legal requirements of California's Meyers Milius Brown Act (Cal. Government Code § 3500, *et seq.*) ("MMBA"), the Public Employment Relations Board's administration of the MMBA, the City's Memoranda of Understanding with the Oakland Police Officers' Association and other represented City employees, the City's Civil Service Board, and other relevant City personnel policies and procedures; and Receive training in open session in the legal requirements of California's Public Safety Officers Procedural Bill of Rights Act (Cal. Government Code § 3300, *et seq.*), and other California Code sections pertaining to peace officers' rights.

Section 2.45.190 also requires that Commissioners and Alternate Commissioners: Receive the training and orientation specified by section 604(c)(9) of the City Charter; Participate in an OPD "ride-along" and attend a police academy curriculum designed for them by the Chief after consultation with the Commission; Complete OPD's Implicit Bias Training and Crisis Intervention Training; Complete Peace Officer Standards and Training Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and Receive training regarding racial equity.

As such, Commissioners and Alternate Commissioners have received training in the above areas pursuant to Section 2.45.190 and in other various topics relevant to the Police Commission's operation. Due to the resignation and appointment of Commissioners and Alternate Commissioners during the past sixteen months, the current roster of Commissioners and Alternate Commissioners are all at different stages in their training and fulfillment of the educational requirements set forth by the Enabling Ordinance. However, over the past sixteen months, the various Commissioners and Alternate Commissioners have received training and education in:

California Brown Act and Oakland Sunshine Act

California Public Records Act

Public Ethics

CPRA Orientation

Measure LL Orientation

Implicit Bias

National Standards of Constitutional Policing

Best Practices for Conducting Investigation

OPD Internal Investigations and Police Discipline

OPD Use of Force Policy and Pursuit Policy/Force Science

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Body Worn Camera Policy

Public Safety Officer Bill of Rights

Office of Inspector General – Overview of Responsibilities

Legal requirements for confidentiality of personnel and other records

Negotiated Settlement Agreement

Procedural Justice

Oakland Police Officers Association

Risk Management (including conflict resolution) and stop data collection

Law regarding arrest and search and seizure

MILO (shoot/don't shoot)

Community Policing

Ride Alongs with OPD

Trainings and educational seminars were provided by OPD, the City Attorney's Office as well as outside resources. Specifically, a majority of the training was provided on February 20, 2018, during the Commission's training retreat regarding: OPD's organizational structure and daily operations; an overview of the investigations and discipline conducted by OPD's Internal Affairs Division; procedural justice training; an overview of OPD training on constitutional policing issues, such as use of force, arrest, search and seizure and free speech; and an overview of responsibilities of OPD's Office of Inspector General. Presenters included, among others: OPD Chief Anne Kirkpatrick, Deputy Chief Oliver Cunningham, Captain Kirk Coleman, Deputy Chief LeRonne Armstrong, Sgt. Brian Hubbard and Lt. Chris Bolton.

Six of the nine Commissioners and Alternate Commissioners were able to attend the National Association of Civilian Oversight of Law Enforcement Annual Conference, a five-day training event in the core competencies for civilian oversight practitioners. The Commissioners and Alternate Commissioners attendance at NACOLE training events is contemplated by Section 2.45.190.

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Additionally, it should be noted that a sufficient number of Commissioners have completed all of the training as required by Section 2.45.130(A) of the Enabling Ordinance for the establishment of the Commission's Discipline Committee.

#### **e. Police Commission Staff**

In January 2018, the Commission began the hiring process for a Commission Administrative Assistant. The Commission welcomed Chrissie Love, Administrative Analyst II, who began her support of the Commission on November 19, 2018.

Section 2.45.180(D) requires that the Commission be furnished with a legal advisor that reports to the Commission and the Commission only and that the Commission's legal advisor shall not report to or be supervised by the City Attorney or any Deputy City Attorney. The Commission is currently without dedicated outside legal counsel to support it. The City Attorney provides fill-in counsel on a meeting to meeting basis to advise the Commission on Brown Act issues. The City Attorney has yet to provide an adequate RFQ describing the outside counsel position and that the legal advisor reports only to the Commission.

While Enabling Ordinance Sections 2.45.100 and 2.45.110 call for the establishment of a Civilian Office of Inspector General and the hiring of a Civilian Inspector General within a particular timeframe, the Commission has not yet agreed with the City Administrator on a job description and hiring process. As such, the position is yet unfilled. The Commission will advise the Civilian Inspector General, once hired, of the priorities, functions and duties established by the Commission in conformance with Enabling Ordinance Section 2.45.120.

## **2. POLICE COMMISSION MEETINGS**

The Police Commission held its first meeting on December 13, 2017, and currently meets on the second and fourth Thursday of each month at 6:30 p.m. Commission meetings typically last four to five hours, with some variation. These meetings robust open forum and public input on issues. Chief Kirkpatrick appears at most meetings to provide reports on Commission-requested topics and to hear public comment. Additionally, starting in April 2018, the Commission engaged in working group sessions during meetings to develop a strategic plan focusing on annual and long-term goals, but also addressing a number of topics at general meetings.

#### **a. OPD Presentations at Commission Meetings**

During the past sixteen months, the Commission requested that Chief Kirkpatrick provide informational reports on a myriad of topics of interest to the Commission and as required by the Enabling Ordinance. Chief Kirkpatrick or her OPD designee presented on topics including:

Comments on reports from the Independent Monitor

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OPD's progress satisfying the terms of the negotiated settlement agreement

Use of CompStat and/or other statistical and management data

Response time statistics

Use of force statistics

Murder case closure statistics

Hiring and discipline status report

Portable Digital Recording Devices ("PDRD") policies, including public access to PDRD videos

OPD's policy towards revisions to disciplinary policies

Coordination between OPD and Oakland Unified School District regarding school safety issues

Citizens Police Academy

March 11, 2018 police-involved shooting at Market and 40<sup>th</sup> Streets

OPD's position on policy edits pursuant to Measure LL

OPD' involvement in restorative justice programs

OPD Barbershop Forums

OPD's position on the February 2, 2018 Case Management Conference in the *Delphine Allen, et at. v. City of Oakland* case

Performance Reporting Information Metrics Environment ("PRIME") system data reporting and performance issues

OPD hiring and recruitment

OPD's involvement with U.S. Immigration and Customs Enforcement ("ICE")

OPD's Force Review Board procedures

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Internal Affairs structure

The Ceasefire Oakland program

OPD's policies and procedures regarding cross-agency complaints

The demographics of OPD's 180<sup>th</sup> Basic Training Academy

Residency statistics and issues for sworn OPD personnel

OPD's youth outreach to Patton Academy

OPD's policies and procedures concerning its dealings with the homeless population

The renewal of Dr. Jennifer Eberhardt's contract with OPD

Status of the in-custody incident causing the death of Marcellus Toney, on September 28, 2017

Status of the shooting incident involving Joshua Pawlik on March 11, 2018

Status of the investigation and findings in the Joshua Pawlik matter

Any reportable information regarding IAD13-1062

The citation and arrest of bicycle advocate, Najari Smith

OPD's vehicle towing policy and impact on the economically disadvantages and homeless

OPD's failure, over the past ten years, to graduate police officer trainees from the Police Academy from underrepresented backgrounds

OPD's uncompleted and outstanding public records requests

Whether OPD has a policy regarding the asking of potential officer recruits if they were a victim of a sexual assault

OPD's policies and actions related to Task 34 General Order M-19 – Prohibition regarding racial profiling and other bias-based policing

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OPD's position and report on its education and support of sworn employees' issues with job related stress, post-traumatic stress disorder, drug and alcohol abuse and other job-related mental and emotional health issues.

**b. Consideration of OPD Policies and Orders**

The Commission reviewed and considered several OPD Policies and Orders including:

OPD Policy 611 – “Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel” and Training Bulletin V-T.1 on Internal Investigation Procedures

OPD Departmental General Order R-02 – “Searches of Individuals on Probation, Parole, Mandatory Supervision and PRCs (Post-Release Community Supervision)”

OPD Departmental General Order C-1 – “Uniforms and Equipment”

**c. Police Commissioner Special Meetings**

In conformance with Section 2.45.090(B) of the Enabling Ordinance, the Commission held two specials meetings outside of its normal meetings at City Hall.

On June 14, 2018, the Commission conducted a special meeting at the East Oakland Youth Development Center centered on a presentation from attorney John Burris on the “Legal Rights of Citizens When Dealing with Police”. The presentation to the public also included a discussion of issues of racial profiling, rising incarceration rates and civil rights litigation, particularly in the context of police misconduct and racial and sexual discrimination.

On February 16, 2019, the Commission held a special meeting at Taylor Memorial Church in Oakland which involved a public hearing on OPD's practices of policing the homeless community. Oakland citizens testified regarding their experiences with OPD and provided insight into how OPD's actions and policies with the homeless may be improved.

**d. Special Presentations to the Police Commission**

On April 26, 2018, the Commission conducted a special training session on the negotiated settlement agreement with the City of Oakland. Presenter, attorney Jim Chanin, provided information and material to the Commission regarding the City's agreement to the negotiated settlement agreement in 2003, requiring major reforms to OPD internal operations and OPD's commitment to constitutional policing.

On June 28, 2018, the Commission arranged for a presentation from Debra Israel and Joan Lohman from Neighbors for Racial Justice. The presentation entitled “Creating Safer and More Welcoming Neighborhoods” discussed issues regarding race, bias, fear of crime and the

impact of these matters on the public. The presentation also included strategies for communities to avoid broad and racial profiling in crime prevention efforts.

On September 27, 2018, Mayor Libby Schaaf made a presentation regarding her desires for a strong Police Commission in the oversight of the OPD and her direction that the City Administrator properly support the Police Commission.

### **3. COMMUNITY POLICE REVIEW AGENCY**

The Commission reviewed CPRA's administrative closures and/or dismissals each month as presented by CPRA's Interim Executive Director in accordance with Enabling Ordinance Section 2.45.070(M).

In January 2018, the Commission began the hiring process for CPRA's Executive Director position. The hiring process is on-going.

Additionally, the Commission appointed Karen Tom to the position of CPRA Interim Executive Director in December 2018 to fill the recently-made vacant position.

### **4. MISCELLANEOUS ACTIONS**

Beginning in February 2018, the Commission reviewed and analyzed Measure LL and the Enabling Ordinance. The Commission accepted public comment and debate on the Enabling Ordinance. After further analysis and discussion, the Commission drafted a memorandum for consideration by the City Council at its May 5, June 19 and July 10, 2018 meetings (and Rules and Legislation Committee meeting).

In February 2018, voted to submit a letter to the Oakland City Council regarding the U.S. Immigration and Customs Enforcement's (ICE) improper identification of its officers as "police" while operating in the City of Oakland and recommending to the Council that it send a letter to ICE demanding that it immediately cease identifying its agents as "police" or "police officers" in the City of Oakland.

On April 23, 2018, the City of Oakland launched its new website, Oaklandca.gov, which included webpages dedicated to the Police Commission. The Commission discussed the content as well as edits and reformatting to those pages. The Commission will make available reports and information in conformance with Enabling Ordinance Section 2.45.070(K).

On October 8, 2018, the Commission received a presentation from the Community Policing Advisory Board ("CPAB") on its annual report and considered consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between OPD and the community, pursuant to Enabling Ordinance Section 2.45.070(O).

In March 2019, the Commission voted to draft a letter in support of AB 392: The California Act to Save Lives, introduced this year by Assembly Member Shirley Weber (D-San Diego), which limits when police officers may use deadly force.

## **5. ON-GOING MATTERS**

The Commission has currently identified other pressing issues currently underway including: a performance review for OPD Chief Kirkpatrick; consideration of Chief Kirkpatrick's proposed goals and annual evaluation; and submission of a proposed budget to Mayor Schaaf regarding training and education for sworn OPD employees regarding management of job-related stress.

### **FISCAL IMPACT**

There are no direct fiscal costs associated with this report.

### **PUBLIC OUTREACH / INTEREST**

No additional public outreach was deemed necessary for this report other than the standard posting of the City Council Agenda.

### **SUSTAINABLE OPPORTUNITIES**

*Economic:* There are no economic opportunities associated with this report.

*Environmental:* There are no environmental opportunities associated with this report.

*Social Equity:* There are no social equity opportunities associated with this report.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the April 11, 2019 Police Commission Annual Report be accepted.

For questions regarding this annual report, please contact Regina Jackson, Chair of the Oakland Police Commission, at 510-238-2187.

Respectfully submitted,

*Regina Jackson*

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REGINA JACKSON  
Chair, Oakland Police Commission

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