

Oakland Police Commission

Priorities During Sustainability Period & Post NSA/Court Oversight

October 27, 2022



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Today's Topics

What are the Commission's Duties Under the City Charter and the Municipal Code that it must complete within the '22-'23 fiscal year?

What next steps should the Commission consider if the City of Oakland stays on track with sustainability and Court oversight ends?

How can the Police Commission prioritize its work and resources (including budget development) to ensure strong reform oversight continues after Court oversight ends?

Topline Summary

The Police Commission should consider the following priorities:

1. Exercise all functions and duties that the voters of Oakland and City Council vested in the Commission in the Charter and the Municipal Code;
2. Enhance its own proactive policy work and streamline its work approving/modifying OPD's proposed policies.
3. Develop a mechanism for OPC to support & track OPD's compliance with the N.S.A.'s tasks during Sustainability Period and after court oversight ends.
4. Communicate budget needs to the City in order to expand the capacity of its own staff and strengthen the departments under its direct oversight (CPRA and OIG).

I.

Charter/Municipal Code Duties & Functions

1. Exercise all function and duty that the voters of Oakland and City Council vested in the Commission in the Charter and the Municipal Code;
2. Enhance its own proactive policy work and streamline its work approving/modifying OPD's proposed policies.

Exercise All Charter/MC Functions

- Build Out “Pending Agenda Matters” List
- Attachment 1 is a list of agenda matters that are functions/duties for OPC to exercise continuously and/or annually.
- Charter requires the Commission to play this role.
- Best way to demonstrate through example the importance of governance and compliance

**Attachment 1: Commission Obligations under Charter and Municipal Code
(Continuous Functions and Duties)**

Task	Charter/MC
Oversee OPD	C 604(a)(1)
Oversee CPRA	C 604(b)(1)
Review the Agency's dismissal and/or administrative closure of all complaints of misconduct involving Class I offenses	OMC 2.45.070(M)
Provide policy guidelines to CPRA Director for determining case prioritization	MC 2.45.070(J)
Determine the number of existing CPRA staff who would work at a "street-level or ground-floor, visible office that is accessible by public transportation."	MC 2.45.020
Oversee OIG	C 604(b)(1), MC 2.45.100(A)
Advise OIG of priorities and the functions and duties, including: <ul style="list-style-type: none"> • Prepare annual report • Monitor/eval # of officers receiving training on profiling, implicit bias, de-escalation, and other key topics • Develop and present a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn officers • Complete all audits/reviews requested by the Mayor, City Administrator, City Council. • Monitor/eval/make recommendations re: <ul style="list-style-type: none"> • Recruiting and hiring sworn personnel • OPD Policies the Commission seeks to create or modify • OPD's risk mgmt. practices 	MC 2.45.120
Contract for Professional Services	C 604(b)(1)
Propose OPD Policies	C 604(b)(4)
Approve/Modify/Reject OPD's Proposed Policies	C 604(b)(5)
Comment on OPD Policies	C 604(b)(6)

Task	Charter/MC
Solicit input from members of the public regarding the quality of their interaction with the Agency and the Commission	MC 2.45.070(Q)
Review and submit comment on Department's policy/practice of publishing Department data sets "and request the Chief to consider its recommendations and respond to the comments in writing"	MC 2.45.070(P)
Maintain/update bylaws	MC 2.45.040
Notify Chief of required contents of Chief report	MC 2.45.070(F)
Make high level Commission, Chief, CPRA, OIG reports available on Commission website	MC 2.45.070(K)
Establish Rules and Procedures for mediation and resolution of complaints of police misconduct	MC 2.45.070(N)
Agendize and Consider Community Policing Advisory Board Reports/Recommendations	MC 2.45.070(O)
Request Records from OPD	C 604(e)(2)
Receive reports from Department via City Administrator on issues identified by the Commission	MC 2.45.070(R)
Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of	OMC 2.45.070(I)

**Attachment 1: Commission Obligations under Charter and Municipal Code
(Annual and Incident-Based Functions/Duties)**

[Annual Functions/Duties]

Task	Charter/ Municipal Code
Set Performance Metrics 1 Year in Advance of Performance Eval (Chief, CPRA Dir, IG)	MC 2.45.070(G)
Conduct 3 Performance Evals (Chief, CPRA Dir, IG)	MC 2.45.070(G)/(H)
At least twice each year, the Commission shall hold one (1) of its regularly scheduled meetings at a location outside of City Hall, agendized 10 days in advance	MC 2.45.090(B)
Hold a Hearing on Department Policies	C 604(b)(2)
Annual report to the Mayor/City Council/the public	C 604(b)(9)
Approve/Modify/Revoke OPD Use of "Military Equipment" via Annual Report Process	MC 9.65.030
[Specific to Budget Cycle]	
Review/comment on education and training re job-related stress and PTSD signs and symptom for sworn officers	MC 2.45.070(C)
Prepare a job related stress proposed budget for mayor by April 15 of each year	MC 2.45.070(D)
Propose staff position submission to City Administrator necessary to permit the Commission and the CPRA to fulfill its functions and duties.	MC 2.45.180
Review Mayor's Budget for OPD	C 604(b)(7)
Hold Hearing on Mayor's Budget for OPD	C 604(b)(7)
Develop and Approve Recommendations to City Council re Mayor's Budget	C 604(b)(7)

[Incident-Based Functions/Duties]

Task	Charter/ Municipal Code
Direct CPRA to investigate serious incidents not otherwise submitted by community members if requested by the Mayor/City Council	MC 2.45.070(L)
Convene Discipline Committees	C 604(G)(2), (5)
Issue Lawful Subpoenas	C 604(b)(3)
Direct CPRA to reopen a closed case	MC 2.45.070(M)
Require Chief or designee to respond to Commission requests made by a majority vote	C 604(b)(8)
Hiring/Removal Authority Over Chief, CPRA Director, OIG	C 604(b)(10), (e)(6), (7)

II.

Important next steps, if and when Court oversight ends?

3. Develop a **mechanism** for OPC to support & track OPD's compliance with the N.S.A.'s tasks during Sustainability Period and after court oversight ends.

Replace Monitor's Policy Work

Oakland Police Commission's Policy Authority

- 604(b)(4) Policy Authority: Create New OPD Policies
- 604(b)(5) Policy Authority: Approve/Modify/Reject Policies Proposed by OPD (often at behest of Monitor)

Area of Authority:

- Use of Force, Force review boards, Profiling based on protected characteristics, 1st Amendment assemblies
- NSA Tasks in 2016!

N.S.A. Tasks are Central to Commission's Authority

City Charter 604(b)(4) & (5) – Powers and Duties

(b)(4): [The powers of the duties of the Commission are . . .]:

“Propose changes at its discretion or upon direction, by adoption of a resolution, of the City Council, including modifications to the Department's proposed changes, to any **policy, procedure, custom, or General Order** of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or **which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect.**”

N.S.A. Tasks in 2016

N.S.A. Task	Description
1.	IAD Staffing & Resources
2.	Timeliness Standards & Compliance w/IAD Investigations
3.	IAD Integrity Tests
4.	Complaint Control System for IAD
5.	Complaint Procedures for IAD
6.	Refusal to Accept or Refer Citizen Complaints
7.	Methods for Receiving Citizen Complaints
8.	Classification of Citizen Complaint
9.	Contact of Citizen Complaint
10.	IAD Manual *tasks in gray do not require assessment
11.	Summary of Citizen Complaints Provided to OPD Personnel
12.	Disclosure of Possible Investigator Bias
13.	Documentation of Pitchess Responses
14.	Investigation of Allegations on MOR Violations
15.	Reviewing Findings & Disciplinary Responses
16.	Support IAD Process-Supervisor/Managerial Accountability
17.	Audit, Review and Evaluation of IAD Functions
18.	Arrest Approval and Report Review
19.	Unity of Command
20.	Span of Control for Supervisors
21.	Members, Employees & Supervisors Performance Review
22.	Management Level Liaison
23.	Command Staff Rotation
24.	Use of force Reporting Policy
25.	Use of Force Investigation and Report Responsibilities
26.	Use of Force Review
27.	OC Log and Check-out Procedures
28.	Use of Force - Investigation of Criminal Misconduct
29.	IAD Investigation Priority
30.	Firearms-Discharge Board of Review
31.	Officer-Involved Shooting Investigation

32.	Use of Camcorders
33.	Reporting Procedures for Misconduct
34.	Vehicle Stops, Field Investigation and Active Detentions
35.	Use of Force - Witness ID
36.	Transporting Detainees and Citizens
37.	Internal Investigations-Retaliation Against Witnesses
38.	Citizens Signing Statements
39.	Personnel Arrested, Sued, or Served
40.	PAS Purpose
41.	Use of PAS
42.	Field Training Program
43.	Academy Training Plan
44.	Personnel Practices
45.	Consistency of Discipline
46.	Promotional Consideration Review

47.	Community Policing
48.	Departmental Annual Management Reports
49.	Monitor Selection/ Compensation
50.	Compliance Unity Liaison Policy
51.	Compliance Audits and Integrity Tests
CD1	Resolve/Reduce incidents that may involve unjustified force, OIS, pointing of firearms
CD2	Resolve/Reduce incidents that may involve racial profiling and bias-based policing
CD3	Resolve/Reduce citizen complaints
CD4	Resolve/Reduce high speed pursuits

May 2022 Court Order of 1-Year Sustainability Period

17 The good news is that the defendants have achieved substantial compliance, and that the
18 path here has led to tangible improvements in policing in Oakland and to the promise that a culture
19 that understands and supports constitutional policing is taking root. This would not have occurred
20 without: the leadership of Chief Armstrong and his leadership team, and their willingness to be
21 accountable and take responsibility; the commitment of the mayor and City officials; the expertise
22 of Dr. Jennifer Eberhart and experts from Stanford University; and the determined, wise and
23 dedicated work of the Independent Monitoring Team. And it will not be sustained without: the
24 commitment of the officers of the Oakland Police Department to the goals, principles and methods
25 of constitutional policing; the continued leadership of City officials and command staff at OPD;
26 and, the constructive oversight by the Oakland Police Commission and its Office of Inspector
27 General (OIG), in whom the citizens of Oakland have invested their confidence.

20 11. The Police Commission, which has authority over the Oakland Police Department,
21 may choose to establish its own assessment protocols for these Tasks during the sustainability
22 year. To the extent it would be helpful, the Monitor/Compliance Director is authorized to share
23 with the Commission's Inspector General any methodologies or tools that have been used during
24 the sustainability period.

October 13

Case Management Conference

Court asking Chief Armstrong: “And I want to just find out from you how the Department intends to ensure that the risk management meetings, which are critical to the ongoing success in this area, are going to continue ***once oversight is no more from the Court and transferred to the Police Commission.***”

N.S.A. Tasks in Sustainability Period 2022-23

The following Tasks were identified by Judge Orrick for the Police Department to Prioritize During the Sustainability Period (June 1, 2022 – *Approx.* June 1, 2023):

Tasks 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45.

Extensive discussion by the Court and N.S.A. Parties during Oct 13, 2022 Case Management Conference

- **Task 5** (Complaint Procedures for IAD due to the two outstanding investigation cases)
- **Task 45** (Consistency of Discipline due to issues identified in the OPD-OIA Discipline Equity and Internal Procedural Justice Report – a.k.a., “Disparity Study”)

October 21 Court Order

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DELPHINE ALLEN, et al.,
Plaintiffs,
v.
CITY OF OAKLAND, et al.,
Defendants.

Case No. [00-cv-04599-WHO](#)

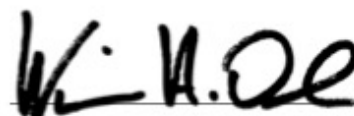
**ORDER RE: INTERNAL AFFAIRS
CASE NOS. 22-0858 AND 22-0443**

The Compliance Director has advised the Court about the lack of cooperation from the Oakland Police Department with the outside law firm conducting two investigations. These investigations are serious in nature. The investigative outcomes may define the measure of the Department's compliance with the sustainability period in general and to the processes of internal accountability in particular. During the October 13, 2022 Case Management Conference, I expressed my concerns about the seriousness of these matters and the need for the City and Department to cooperate with the efforts of the outside law firm.

Given these facts, I direct the Compliance Director to use his authority to ensure that Internal Affairs Case Nos. 22-0858 and 22-0443, and any investigative derivatives thereof, are fully investigated, that timelines are properly met, and that all follow-up actions are taken. *See* Dec. 12, 2012 Order at 6 (granting the Compliance Director "authority to direct specific actions by the City or OPD to attain or improve compliance levels or remedy compliance errors, regarding all portions of the NSA and AMOU," as well as "the power to review, investigate and take corrective actions regarding OPD policies, procedures and practices that are related to the objectives of the NSA and AMOU").

IT IS SO ORDERED.

Dated: October 21, 2022


William H. Orrick
United States District Judge

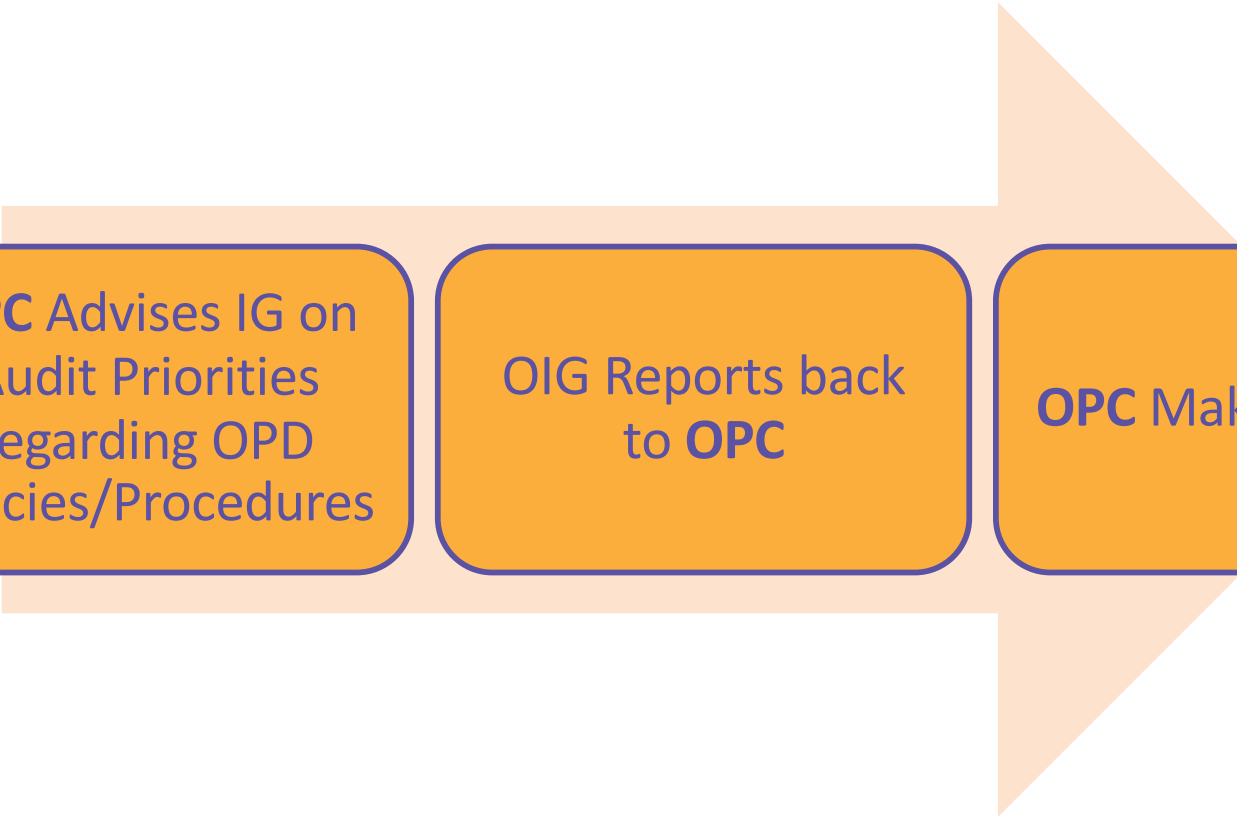
Auditing N.S.A. Tasks Under Commission Oversight (via OIG)

City Charter 604(f)(5): **Investigations.**

“The OIG shall audit the Department's compliance with the *fifty-two (52) tasks described in the Settlement Agreement* in United States District Court case number C00-4599, *Delphine Allen, et al., v. City of Oakland, et al.*, and make recommendations to the Department, the Commission, and the City Council based on its audit(s), *even after the Settlement Agreement expires.*”

Additional Authority Gives Commission Authority to Advise OIG of
Monitoring Priorities: Municipal Code 2.45.120(f)

OPC / OIG Replace the Monitor's Audits and Policymaking Authority



OPC Advises IG on
Audit Priorities
regarding OPD
Policies/Procedures

OIG Reports back
to **OPC**

OPC Makes Policies

III.

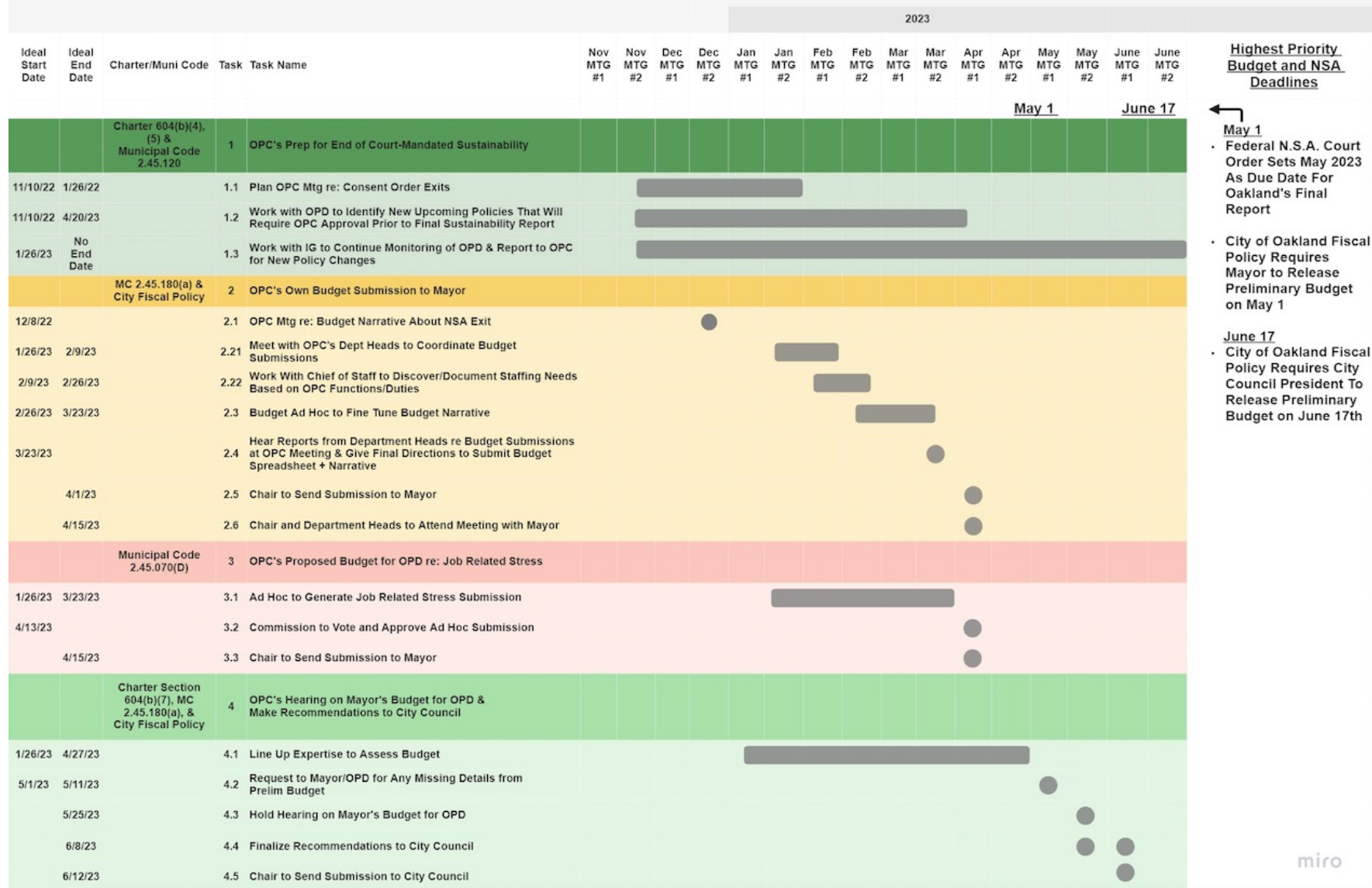
Identify Resource Needs & Operational Priorities

4. Communicate budget needs to the City in order to expand the capacity of its own staff and strengthen the Departments under its direct oversight (CPRA and OIG).

Budget Season

- Expand the capacity of Commission's own staff and strengthen the Departments under its direct oversight (CPRA and OIG)
- See Attachment 3: Proposed '22/'23 Budget Season Plan

Proposed Budget Process Anticipating May 2023 Budget Season & NSA Exit



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Summary

1. Exercise each and every function and duty that the voters of Oakland and City Council vested in the Commission in the Charter and the Municipal Code;
2. Enhance its own proactive policy work and streamline its work approving/modifying OPD's proposed policies.
3. Develop a mechanism for OPC to support and track OPD's compliance with the N.S.A.'s tasks during Sustainability Period and after court oversight ends.
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Chief of Staff *Kelly Yun*
Mapping Commission Functions & Duties

Q & A

