



PERFORMANCE AUDIT OF THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY

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JUNE 1, 2020

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June 1, 2020

HONORABLE MAYOR
HONORABLE CITY COUNCIL
HONORABLE POLICE COMMISSION
COMMUNITY POLICE REVIEW AGENCY
HONORABLE CITY ATTORNEY
CITY ADMINISTRATOR
RESIDENTS OF OAKLAND
OAKLAND, CALIFORNIA

**RE: PERFORMANCE AUDIT OF THE OAKLAND POLICE COMMISSION AND THE COMMUNITY
POLICE REVIEW AGENCY**

Dear Mayor Schaaf, President Kaplan, Members of the City Council, Chair Jackson, Members of the Police Commission, Director Alden, City Attorney Parker, City Administrator Reiskin, and Oakland Residents:

In 2016, a group of concerned residents, tired of waiting for the City to get police oversight right, proposed a ballot measure to create an independent police commission. A sex scandal involving multiple officers with a minor surfaced in May 2016, as the ballot language for Measure LL was being finalized by the City Council for the November 2016 election. This was just another example of a high-profile scandal plaguing Oakland Police Department (OPD) and the need for effective police oversight and accountability was once again, painfully clear.

Measure LL, passed by 83 percent of Oakland voters, creating a Police Commission (Commission) run by civilian commissioners to oversee the OPD and a Community Police Review Agency (Agency) to investigate complaints of police misconduct.

Measure LL requires the City Auditor to evaluate the Commission and Agency's progress in meeting its mandates, no later than two years after the first set of Commissioners are confirmed, which occurred in October 2017.

The overall objectives of the audit were to determine whether the Commission has provided effective oversight of the OPD and the Agency and whether both the Commission and the Agency complied with the requirements of the City Charter and the Oakland Municipal Code Sections 2.45 and 2.46. The audit includes 5 findings and 41 recommendations.

The audit scope includes the Commission's activities and meetings from December 2017 through December 31, 2019, and Agency investigations conducted from January 2018 to August 2019, and a significant matter that occurred in February 2020.

Since the Commission's inception, it has undertaken various activities related to its mission, however, the audit found more work is required for the Commission to be more effective. Oakland's Police Commission was created to be one of the most powerful police oversight bodies in the country, however, it must be effectively organized and properly supported to use its power to create lasting systemic change for the community and the Police Department. The pages that follow outline what has been done, what needs to be done, and the challenges the Commission has faced in meeting its mandate.

Additionally, the Commission must take great care to understand its role and responsibilities as a public oversight body and the City Council should work with the Commission, City Administration, and City Attorney to better define their respective roles. The Commission's greatest power is its ability to create effective policy, but it cannot do that without the proper organizational foundation and an unwavering commitment to prioritize the policies of greatest importance to our community's safety.

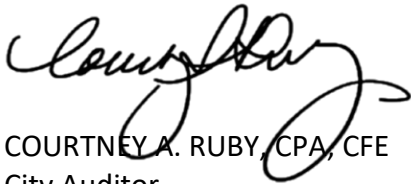
The audit also examines the sufficiency of the Agency's investigation process to ensure timely and comprehensive investigations, as prescribed by the Oakland City Charter and Oakland Municipal Code. While the audit notes significant deficiencies in the Agency's investigation processes, the good news is the Agency has embraced the audit recommendations with a sense of urgency and purpose and has already implemented more than half of the recommendations.

Lastly, as we release this report, I think it is important to acknowledge that our City, and cities across our nation are reeling from the recent deaths of Ahmaud Arbery, Breonna Taylor and George Floyd. Police violently took the lives of Mr. Floyd and Ms. Taylor. These tragedies illustrate the enormous power law enforcement officers are capable of wielding against our residents, who in many cases are unable to resist an officer's illegitimate use of

power. Their deaths yet again, remind the leaders and residents of Oakland, about the need for effective police oversight to eliminate racial bias, profiling, and the illegitimate use of power.

Oakland and its residents have long had a sense of urgency when it comes to police accountability. Oakland must get it right. We acknowledge the Commission has a heavy lift, much responsibility to shoulder and the challenges they face as a new Commission are many. While this report shines a bright light on the areas in which the Commission and Agency fall short, they now have a roadmap from which to operate. It is my hope the Commission and the Agency embrace this report to deliver what our residents envisioned in passing Measure LL, endeavor to dive deeper into the policies and practices that are holding OPD back from meeting the Negotiated Settlement Agreement, and to realize a Police Department modeling the best in police accountability and transparency, while keeping all our residents safe.

Sincerely,

A handwritten signature in black ink, appearing to read 'Courtney Ruby', with a large, stylized flourish at the end.

COURTNEY A. RUBY, CPA, CFE
City Auditor

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Executive Summary

Introduction and Background

For decades, the Oakland Police Department (OPD) has been plagued by corruption, misconduct and high-profile scandals. The seriousness of these issues and the inadequate responses to them, eroded residents' confidence in OPD and ultimately resulted in federal oversight. In an effort to ensure constitutional policing and a police force the community trusts, residents came together and placed Measure LL on the November 2016 ballot to support the creation of a civilian Police Commission.

Measure LL was passed by 83 percent of Oakland voters creating the Oakland Police Commission (Commission) and the Community Police Review Agency (Agency). Measure LL provided the Commission with significant powers to oversee OPD policies, practices, and customs and ensure adherence to constitutional policing practices. The Agency is an investigative body, charged with looking into complaints of misconduct against OPD.

In July 2018, City Council enabled the implementation of this City Charter amendment by adding Chapters 2.45 and 2.46 to the Oakland Municipal Code (Municipal Code). Additionally, the Municipal Code required the creation of a civilian Office of the Inspector General to conduct audits or reviews of OPD's performance and adherence to constitutional policing practices to assist the Commission in fulfilling its oversight duties under the City Charter.

Since its inception, the Commission has undertaken various activities related to its mission such as hiring a new Agency Executive Director, holding meetings twice a month and meeting quorum consistently, attending mandated training, annually holding a meeting outside of City Hall, holding a retreat in September 2019, initiating work in 2019 to overhaul OPD's use of force policy in 2020, and attending a special meeting on legal rights of residents when dealing with police and OPD's practices of policing the homeless community hosted by a community group.

The Agency replaced the Community Police Review Board (CPRB), which had been in place for nearly 40 years. On December 15, 2017, pending business and all CPRB staff were transferred to the Agency. The Executive Director of the CPRB became the first Interim Director of the Agency and was succeeded by two more Interim Executive Directors until a permanent Executive Director joined the Agency in July 2019.

Executive Summary

Audit Findings and Recommendations

Finding 1. The Commission's actions have resulted in two changes to OPD's policies through December 2019 and it has not fully implemented requirements of the City Charter and the Municipal Code

The audit found that the Commission, through 2019, made two changes to OPD policies relating to stopping people on parole and reporting on the use of force. More recently, in January 2020, the Police Commission reviewed and approved another policy on when and how officers should use force. The Commission is also working on a comprehensive overhaul of OPD's use of force policy. In addition, the City Charter and the Municipal Code include approximately 105 requirements for the Commission to execute. The Commission has not fully implemented 13 key requirements and 23 additional requirements in the City Charter and Municipal Code including hiring an Inspector General, requesting annual reports from the Police Chief or semi-annual reports from the City Attorney, completing required training, establishing a process to evaluate the performance of the Chief of Police or the Agency Director, consistently complying with the California Brown Act, and formally reviewing OPD's budget.

The audit also revealed the Commission has not provided guidance to the Agency on how to prioritize its cases at a time when the Agency lacked consistent leadership or adequate staff to meet its caseload, nor has it established a process for reviewing and approving administrative closures or dismissals of Agency investigations, established a mediation program or developed written procedures to ensure compliance with OPD procedures for the release of audio and video tapes of Class I alleged offenses. Class I offenses include use of force, in-custody deaths, and profiling based on any of the protected classes.

The Commission's ability to fulfill all of its requirements has been limited by numerous factors. These challenges include: establishing a new organization, the lack of senior administrative staff, conflicting language in the Municipal Code which led to a stalemate in the hiring of the Inspector General, the lack of a formal process and structure in the City for establishing the Commission, a working relationship between the Commission and City Administration that needs improvement, and an insufficient structure to support the Commission from its inception.

To increase its effectiveness and ensure compliance with the City Charter and the Municipal Code, this section of the audit report contains eight recommendations for the Commission. The recommendations include adding a senior level staff person to assist the Commission in establishing a sufficient structure for focusing its work on key priorities and managing its day-to-day responsibilities, developing goals and objectives, a strategic plan, annual work plans, and policies and procedures to ensure agenda items are properly noticed and prioritized. Additionally, policies and procedures need to be developed for conducting all aspects of the Commission's

Executive Summary

oversight function including: defining the roles of the Chair, Vice-Chair and Committees, developing an effective process for reviewing OPD's policies and practices and prioritizing new policies and practices, monitoring training requirements, requesting and reviewing reports from the Chief of Police and the City Attorney, ensuring compliance with the Brown Act, providing guidance to the Agency on how to prioritize cases, establishing a mediation program, and releasing audio and video tapes of Class I alleged offenses.

An additional two recommendations are directed to the City Administration to develop a formal orientation program to ensure that new Commissioners and other oversight bodies are better prepared to assume their duties prior to being seated, and another recommendation is addressed to the Commission and the City Administration to help in improving their working relationship.

Finding 2. The Commission's Powers and Duties Should Be Clarified

The audit found that the Commission has involved itself in matters that limit its ability to address higher priority issues. For instance, the Commission has involved itself with administrative activities and has directed staff in the Agency and OPD. Additionally, the Commission has involved itself in areas that may not be consistent with its prescribed duties or are not the best use of its limited time and resources. Finally, the Commission has difficulty managing its meetings and has not adopted a code of conduct or a comprehensive social media policy. Clarifying the Commission's powers and duties will ultimately assist them to address their higher priorities.

Much of its inability to complete all its mandated duties stem from the Commission not fully understanding its roles and responsibilities as a public oversight body. This lack of understanding has led to the Commission inappropriately directing staff, involving itself in the contracting process, making disparaging comments to other Commissioners, City staff, the Commission's own legal counsel, and the public. Commissioners have also acted on matters outside their authority and addressed instances of perceived racial bias on a case-by-case basis, rather than focusing on the larger systemic issues of racial profiling facing our residents.

To address these issues, this section includes five recommendations directed to the Commission and another recommendation directed to the City Administration. The five recommendations directed to the Commission include: obtaining training on conducting and managing public meetings, ensuring agenda items are consistent with their mission, enforcing limits on public comments, and developing a written code of conduct and a comprehensive social media policy. The recommendation directed to the City Administration is to develop appropriate protocols for addressing instances in which Commissioners contact City staff directly.

Finding 3. The Agency has not fully implemented City Charter and Municipal Code requirements

The Oakland City Charter and the Municipal Code require the Agency to implement 39 key

Executive Summary

requirements intended to improve the Agency's investigations and to support the efforts of the Commission. The Agency has not fully implemented eight of these City Charter and Municipal Code requirements. It should be noted the Agency operated without a permanent Executive Director from December 2017 to June 2019. Additionally, the requirements of the new measure increased the workload of the new Agency.

Specifically, the Agency did not meet the City Charter's staffing requirements during our review period, has not completed investigations in compliance with timeframes outlined in the City Charter and State Law, has not always videotaped interviews of officers who allegedly committed Class I offenses, has not always received requested information from IAD and other OPD departments within the Charter mandated timeframes, needs to improve its processes for classifying and submitting administrative closures/dismissals to the Commission, and has not provided sufficient training to Agency staff. Additionally, the Agency's office is not visible to the public as the Municipal Code requires.

To address these issues, this section contains nine recommendations for the Agency and one recommendation for the City Administration. To ensure compliance with the Municipal Code regarding the Agency's office location, the City Administration and the Agency should work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.

To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should establish written goals and objectives regarding the timeliness of its investigations which should include a management reporting system to allow management to monitor the timeliness of investigations. The Agency should also develop written policies and procedures to ensure investigations are concluded in a timely manner, ensure all interviews with officers who allegedly committed Class I offenses are videotaped, establish criteria for defining administrative closures and begin to report all administrative closures to the Police Commission, and develop and implement a formal training program for all Agency staff.

Finding 4. The Agency's investigative processes are not formalized, and the Agency and the Commission have not adequately defined the type of oversight role it should provide

Quality Standards for Investigations by the Council of Inspectors General (Standards) require investigations to be conducted in a thorough, diligent, and complete manner. Investigations must be conducted in accordance with applicable laws, rules, regulations, and guidelines. Methods and techniques used in investigations must be appropriate for the individual circumstances and objectives of each case. Findings must be supported by adequate, accurate, and complete documentation in the case files and investigations must be executed in a timely, efficient, thorough, and legal manner.

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The Agency is required to investigate all public complaints, which include use of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies such as resident protests or marches. Additionally, the Agency must investigate all public complaints related to policies and procedures on federal court orders such as the Negotiated Settlement Agreement if directed by the Commission.

The Agency must also investigate any other possible misconduct or failure to act of an OPD sworn employee, whether it is or is not the subject of a public complaint, as directed by the Commission.

The audit found the Agency lacks a formal process for conducting investigations. Thus, the Agency's investigative processes are not clearly defined and documented. Consequently, staff are not adequately trained, and investigations are not conducted timely, and in accordance with best practices. Specifically, we noted the Agency has not:

- Formalized its complaint intake process;
- Documented its considerations for assigning staff to conduct investigations;
- Established formal planning processes for investigations;
- Documented requirements for investigations;
- Established a quality control system to ensure that its policies and procedures are followed; and
- Implemented a strong management information system to monitor the status of investigations and to provide statistical data on its performance.

To ensure efficient, effective, compliant, and consistent investigations, this section includes eight recommendations for the Agency. The recommendations include defining and documenting the overall processes necessary to undertake investigations, which include establishing policies and procedures for the intake process, establishing a formal process for assigning staff to an investigation, ensuring all job qualifications are met before hiring an investigator, establishing procedures for planning, reviewing and approving investigations before the formal investigation commences, standardizing investigation reports, and establishing quality review policies and procedures. Lastly, the Agency should work with the Commission to determine the investigative agency oversight model it should adopt.

Finding 5: The City Council should consider amending several of the Commission's City Charter and Municipal Code requirements

The City Council is considering amending Section 604 of the City Charter through a ballot measure to go before the voters in November 2020. During our audit, we identified several issues with the

Executive Summary

City Charter and the Municipal Code that the City Council should consider addressing in the new ballot measure. These issues include the process for removing the Chief of Police, the use of selection panels to nominate Commissioners, the Commission's authority, and whether the Commission has more requirements than a part-time oversight body can effectively fulfill.

This section recommends the City Council re-assess the City's process for removing the Chief of Police, debate the pros and cons of the various appointment methods used to select Commissioners, and consider strengthening the requirements of who can be a selection panel member in order to avoid potential conflicts of interest. The audit also recommends adding language to the proposed ballot measure to clearly identify the Commission's authority and responsibilities and prohibit the Commission from participating in administrative activities and directing staff below the Agency Director and the Chief of Police. Lastly, the audit recommends the City Council reassess the Commission's City Charter and the Municipal Code requirements to determine whether the Commission, which is comprised of part-time volunteers, can effectively address these requirements or whether the City Council should eliminate some of the requirements in the proposed City Charter amendment or in the Municipal Code.

The Commission, Agency, and City Administration's Response, and the Office of the City Auditor's Response

The last section of the audit report includes responses to the audit from the Commission, the Agency, and the City Administration. In addition, the Office of the City Auditor has provided clarification to the Commission's response at the end of this report.

Introduction and Background

Introduction

The Office of the City Auditor conducted an audit of the Oakland Police Commission (Commission) and the Oakland Community Police Review Agency (Agency) in accordance with the requirements of Measure LL, a civilian-initiated ballot measure. The questions on the Measure LL ballot were, “Shall Oakland’s City Charter be amended to establish: (1) a Police Commission of civilian commissioners to oversee the Police Department by reviewing and proposing changes to Department policies and procedures, requiring the Mayor to appoint any new Chief of Police from a list of candidates provided by the Commission, and having the authority to terminate the Chief of Police for cause; and (2) a Community Police Review Agency to investigate complaints of police misconduct and recommend discipline?” See Appendix A for the ballot measure language.

Measure LL was passed by 83 percent of the voters in November 2016 creating the Commission and the Agency. The Commission is a civilian oversight board to oversee the Oakland Police Department’s (OPD) policies, practices, and customs and ensure adherence to constitutional policing practices. The Agency is an investigative body, to investigate complaints of misconduct against OPD.

Measure LL added Section 604 to the Oakland City Charter (City Charter) establishing the Commission and the Agency. In July 2018, the City Council enabled the implementation of this City Charter amendment by adding Chapters 2.45 and 2.46 to the Oakland Municipal Code (Municipal Code). Additionally, the Municipal Code required the creation of a civilian Office of the Inspector General to conduct audits or reviews of OPD’s performance and adherence to constitutional policing practices and OPD’s policies and procedures, in order to help the Commission, fulfill its oversight duties under the City Charter.

The City Charter also mandates the Office of the City Auditor to conduct a performance and financial audit of the Commission and the Agency, no later than two (2) years after City Council has confirmed the first set of Commissioners and Alternates.

The overall audit objectives were to determine whether the Commission provided effective oversight of OPD and the Agency, and whether both the Commission and the Agency complied with the requirements of the City Charter and the Municipal Code. The audit also included a financial review of the Commission’s and the Agency’s budgets and expenses to determine whether costs were reasonable and appropriate.

Introduction and Background

Background

Police Commission

The Commission is comprised of nine unpaid volunteers from the community: seven regular members and two Alternates. The Mayor recommends three Commissioners and one Alternate and a selection panel recommends four Commissioners and one Alternate to the City Council for approval. The selection panel is comprised of nine community members appointed by each District Councilmember, the Councilmember At-Large, and the Mayor. On October 17, 2017, the City Council approved the Mayor's and the selection panel's first group of appointments to serve on the Commission. The Commission convened its first meeting in December 2017 and meets twice monthly at City Hall.

Commission's powers and duties specified by the City Attorney's Impartial Ballot Analysis

The City Charter and the Municipal Code grant the Commission certain powers and duties. The full-text of the powers and duties in the City Charter Section 604 (b) are shown in Appendix B and the full-text of the functions and duties of the Commission and the Agency in the Municipal Code Sections 2.45.070 and 2.46.030 are shown in Appendix C and Appendix D.

The City Attorney prepared an impartial legal analysis regarding the City Charter amendment showing the effect of the Measure on the existing law and the operation of Measure LL, which states:

1. "The measure would establish the Police Commission (Commission) to oversee the Police Department's policies and procedures, and a Community Police Review Agency (Agency) to investigate complaints of police misconduct and recommend discipline."
2. The Commission would, "Review the OPD's policies, procedures, and General Orders. The Commission may also propose changes, and approve or reject OPD's proposed changes, to those policies, procedures, and General Orders that govern use of force, profiling, and general assemblies. The Commission's proposed changes, and any rejections of the OPD's proposed changes would be subject to the City Council's review and approval. The Commission would be also required to conduct at least one public hearing a year on OPD's policies, procedures, and General Orders." It should be noted that the Charter also empowers the Commission to review or propose policies associated with those listed in federal court orders or federal court settlements, as long as those remain in effect. Moreover, the Charter also empowers the Commission to review and comment, at its discretion, on any of OPD's policies, procedures, and General Orders.

Introduction and Background

3. The Commission would decide on the discipline when the Chief of Police and the Agency disagree on findings and discipline. Specifically, the ballot analysis states, “If the Chief disagrees with the Agency’s findings and proposed discipline, the Chief would be required to prepare separate findings and proposed discipline. A three-member committee of the Commission would consider the Agency and the Chief’s recommendations and make a final decision, subject to the officer’s ability to file a grievance, and the City must allocate enough money to the Commission and the Agency to perform their required functions and duties.”

Additional powers and duties specified by the City Charter and Municipal Code

The City Charter specifies the authority to:

- Organize, reorganize, and oversee the Agency.
- Submit three Agency Director candidates to the City Administrator to hire, as well as the authority to hire or fire the Agency Director with the approval of the City Administrator.
- Issue subpoenas to compel the production of book, papers, and documents or testimony on matters pending before it.
- Remove the Chief of Police, either acting separately or jointly with the Mayor.
- Provide a list of four candidates to the Mayor to choose to permanently appoint a Chief of Police.
- Perform other functions and duties as required by the City Charter and the Municipal Code.

The Municipal Code adds responsibilities such as:

- Providing policy guidelines on case prioritization for the Agency.
- Soliciting and considering input from the public regarding the quality of their interactions with the Agency and the Commission.
- Requesting semi-annual reports from the City Attorney and an annual report from the Chief of Police.
- Establishing rules and procedures for the mediation of complaints.

Introduction and Background

Community Police Review Agency

The Agency was established in November 2016 to provide the community with an accessible forum to report cases of alleged police misconduct and offer independent civilian investigations of those complaints. On December 15, 2017, the Agency replaced the Community Police Review Board (CPRB), which had been in place for nearly 40 years. Pending business and all CPRB staff were transferred to the Agency.

The role of the CPRB and the Agency has evolved over time. The Executive Director of the CPRB became the first Interim Director of the Agency and was succeeded by two more Interim Executive Directors until a permanent Executive Director joined the Agency in July 2019. This transition from the CPRB to the new Agency increased the staff's workload, both in investigations and administrative and support capacities. See Appendix E for the Agency timeline of events and changing roles of CPRB and the Agency.

The Agency is currently comprised of an Executive Director, three intake technicians, one supervisor, one policy analyst and six investigators, three of which were newly hired (in October 2019). The Agency also has an Office Assistant II position.

The City Charter requires the Agency to:

- Receive, review, and prioritize all public complaints concerning the alleged misconduct or failure to act of all OPD sworn staff, including complaints from OPD's non-sworn staff.
- Investigate all public complaints related to use of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, First Amendment assemblies such as resident protests or marches, and policies and procedures on federal court orders such as the Negotiated Settlement Agreement(NSA).¹
- Investigate any other alleged misconduct or failure to act of OPD sworn staff, whether or not the sworn staff member is the subject of a public complaint, as directed by the Commission.

Office of the Inspector General

The civilian Office of the Inspector General was created in the Municipal Code on July 10, 2018. It has not been formed as of December 2019 (Please see Finding 1 for additional details).

¹ On January 3, 2003, the City entered into a Negotiated Settlement Agreement (NSA) requiring implementation of 51 tasks to promote police integrity and prevent conduct that deprives persons of their constitutional rights.

Introduction and Background

Budget

Exhibit 1 below summarizes the actual and budgeted expenditures and Full-Time Equivalent (FTE) staff² assigned to the Commission, the Agency, and the Inspector General for FY 2017-2018 through FY 2019-2020.

Exhibit 1 – Actual and Budgeted Expenditures for the Commission, the Inspector General, and the Agency

Department	FY2017-2018		FY2018-2019		FY2019-2020	
	FTE	Actuals	FTE	Actuals	FTE	Budgeted
Commission	1	\$3,570	1	\$108,345	1	\$552,412
Inspector General ³	0	\$ -	0	\$ -	2	\$659,765
Community Police Review Agency	13	\$2,110,933	13	\$2,314,225	14	\$2,889,821
Total	14	\$2,114,503	14	\$2,422,570	17	\$4,101,998

² Figures related to staffing are for budgeted Full-Time Equivalent (FTE) positions.

³ The Inspector General position has not been filled as of December 31, 2019.

Objective, Scope, and Methodology

Audit Objectives

The objectives of the audit were to:

- Determine whether the Commission provided effective oversight of the Oakland Police Department.
- Assess whether the Commission and the Agency adequately complied with the requirements of the Oakland City Charter and the Oakland Municipal Code Sections 2.45 and 2.46.
- Assess whether the Agency established sufficient controls to effectively manage its caseload of complaints to ensure timely and comprehensive investigations.
- Assess whether the Commission's and the Agency's costs are appropriate.
- Assess whether existing language in the City Charter and the Municipal Code, or proposed changes to the Charter and the Municipal Code should be revised.

Audit Scope

The audit scope included Commission activities and meetings from December 2017 through December 31, 2019, Agency investigations conducted from January 2018 to August 2019, and a significant matter that occurred in February 2020.

Methodology

1. Reviewed a sample of past Commission meetings, including reviewing meeting minutes and listening to videos totaling over 50 hours of Commission meetings.
2. Interviewed Commissioners and Agency personnel to gain an understanding of their roles and responsibilities, and to identify internal controls related to carrying out their respective roles.
3. Interviewed personnel from OPD, City Administrator's office, City Attorney's office, City Finance, outside Agency counsel, and former outside Commission counsel to gain an understanding of their roles in relation to the Commission and the Agency.
4. Reviewed a sample of 30 out of 81 Agency investigations to determine whether investigations were completed timely, consistently, and were properly approved.
5. Reviewed relevant sections of the City Charter, Municipal Code, National Association for Civilian Oversight of Law Enforcement Standards, Council of Inspectors General Standards, Standards and Guidelines for Internal Affairs, and other relevant rules and regulations.

Objective, Scope, and Methodology

6. Reviewed training logs to determine whether Commissioners complied with training requirements, as outlined in the City Charter and the Municipal Code.
7. Obtained and reviewed appropriate documentation to determine whether the Commission and the Agency complied with the City Charter and the Municipal Code.
8. Reviewed available reports and interviewed personnel from other jurisdictions with civilian police oversight bodies.
9. Surveyed 32 jurisdictions to determine how the members of their police oversight bodies are appointed.
10. Assessed existing language in the City Charter and the Municipal Code, as well as proposed City Charter amendments, to determine if additional revisions were warranted.
11. Reviewed *“Beyond Ethics: Establishing a Code of Conduct to Guide Your Council”* in the December 2019 issue of Western Cities Magazine and *“Making It Work: The Essentials of Council-Manager Relations”* published by the International City/County Management Association, to gain an understanding of codes of conduct and the creation of oversight bodies.
12. Reviewed the Ontario Human Rights Commission’s *“Policy on eliminating racial profiling in law enforcement”* to gain an understanding of the guiding principles on addressing racial profiling in law enforcement.

Statement of Compliance

Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

Finding 1: The Commission's actions have resulted in two changes to OPD's policies through December 2019 and it has not fully implemented requirements of the City Charter and the Municipal Code

Summary

The City Charter grants the Commission powers to propose changes and approve or reject OPD's policies, procedures, customs, or General Orders that fall within categories such as the use of force, use of force review boards, or profiling based on any of the protected characteristics. Furthermore, the Charter authorizes the Commission to review and approve changes to OPD's policies, procedures, and General Orders associated with those listed in federal court orders or federal court settlements, as long as those remain in effect. Moreover, the Charter also empowers the Commission to review and comment, at its discretion, on any of OPD's policies, procedures, and General Orders.

Since the Commission was seated in late 2017, it has undertaken a number of activities related to its mission. The Commission, however, has only modified two of the Department's policies through December 2019 and completed another change in January 2020. In addition, the Commission has not fully implemented requirements in the City Charter and in the Municipal Code. For instance, the Commission has not hired an Inspector General, completed all required training, obtained required reports from the Chief of Police and the City Attorney, established a process to evaluate the Chief of Police and the Agency Director, consistently complied with the Brown Act, as well as other requirements specified in the City Charter and the Municipal Code. Thus, the Commission has not fully implemented all the City Charter requirements in the voter-approved measure and all the requirements the City Council adopted in the enabling ordinance.

The Commission's ability to meet its mandate has been limited by numerous factors including: the challenge of establishing a new organization, the lack of senior administrative staff, conflicting language in the Municipal Code which led to a stalemate in the hiring of the Inspector General, the lack of a formal process and structure in the City for establishing the Commission, a working relationship between the Commission and City Administration that needs improvement, and an insufficient structure to support the Commission from its inception. Specifically, the Commission needs to establish written goals and objectives, a strategic plan, annual work plans, meeting agendas structured to address its key functions, written policies and procedures for guiding its work, public reports assessing its performance, and a clear budget process.

The Commission's activities related to its mission

The Commission has undertaken various activities related to its mission:

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- Hired a new Agency Executive Director
- Held meetings twice per month and met quorum consistently
- Received some of the required training
- Reviewed some administrative closures⁴
- Heard various presentations from OPD
- Dismissed and replaced the Interim Executive Director of the Agency
- Attended special meetings on legal rights of residents when dealing with police and on OPD's practices of policing the homeless community
- Adopted a limited social media policy
- Other miscellaneous actions

The Commission reviewed and approved two policies through 2019

As noted in the Introduction of the report, the City Charter enumerates the powers and duties of the Commission. One of the functions of the Commission is to review and propose changes and approve or reject OPD's policies, procedures, customs, or General Orders that fall within the categories as listed below:

- Use of force
- Use of force review boards
- Profiling based on any of the protected characteristics
- First Amendment assemblies⁵
- Policies and procedures on federal court orders such as the NSA
- Review and comment on all other OPD policies, procedures, and General Orders

Since being seated in late 2017 through December 2019, the Commission modified two of OPD's policies and procedures. The two policies relate to stopping people on parole and reporting on the use of force as discussed below. In January 2020, the Commission reviewed and approved

⁴ Administrative closures are cases that are received by the Agency or OPD but are not investigated because they are outside of the Commission's jurisdiction or it is evident upon initial review that the claim is unfounded.

⁵ Public protests or marches.

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another policy on when and how officers should use force.

First policy

In July 2019, the City Council adopted OPD General Order R-02. This policy, authored by the Commission, relates to searches of individuals on supervised release or probation. The Commission heard directly from impacted communities, including those currently on parole and probation, and community advocates in developing this policy. This policy change modifies OPD's procedures to prohibit OPD officers from asking whether individuals stopped are on probation or parole.

Second policy

In July 2019, OPD presented the Commission with Special Order 9196 to modify the DGO K-03 'Use of Force' policy to address and clarify requirements for the proper reporting of use of force to satisfy task 24 and 25 of the NSA. The Commission made language changes to this Special Order. These changes address when an officer exhibits, or removes a gun from a holster, and/or points a firearm at another person. OPD compromised and accepted the language changes and presented the policy change to the Commission in October 2019. The Commission subsequently approved the modifications to the policy.

Third policy initiated in 2019

In August of 2019, Governor Newsom signed AB 392, effective January 1, 2020, which set forth clear intent on when and how force by police officers in the State should be used. Starting in 2020, the DGO K-03 policy would not have been in compliance with this new State Law. To ensure OPD complied with this requirement, OPD convened an ad hoc committee in October made up of Commissioners, Agency staff, Plaintiff's attorneys from the NSA, a community member, representatives from the City Attorney's office, and members of OPD's Executive Command and Training staff, to work on OPD's DGO K-03 Use of Force policy. This committee met six times to address the new State requirements for use of force. Further, this same ad hoc committee agreed on a two-step approach to first bring OPD's policy into compliance with State Law while simultaneously committing to continuing work on a major revision of the policy during 2020.

In December 2019, OPD presented the Commission with the Committee's revisions to the policy for Commission approval. Since the State Law went into effect on January 1, 2020, the revision to OPD's policy should have been approved before the end of the year. The Commission did not approve the revision. Instead, the Commission wanted to make additional edits put forth by community groups days before the Commission meeting. After attempting to make additional edits at a Commission meeting, the Commission moved the agenda item to the first meeting in January 2020—after the State Law became effective. The Commission approved this new policy

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on January 9, 2020.

During 2019, while the Commission was working on Special Order 9196 and AB 392, they were also laying the ground work for a significant overhaul of OPD's Use of Force policy. The Commission states, they used "a "two-track" approach, the first to address and approve individual policy changes responsive to the NSA process or changes to the state law, and second to get involved deeper into the research on the overhaul and prepare for what would be at least "a year's worth of work."

Challenges in policymaking

It should be noted that the policy review and approval process can be very time consuming because the process often requires OPD to meet and confer with the Oakland Police Officer's Association, as well as consulting with the City Attorney's Office, and sometimes the federal monitor and the community to obtain input. In addition, the Commission must discuss and make all policy change decisions in a public meeting to be in compliance with the Brown Act.

Besides the above policy changes, OPD and the Agency have provided the Commission with a list of policies to consider addressing. In January 2019, OPD sent the Commission a list of all policies being considered for update. In February 2019, the Commission requested a narrative summary report on the Agency's priorities and recommendations based on the list of policies being considered for update. In March 2019, in response to the Commission's request, the Agency provided the Commission with a report highlighting policies the Commission should review and comment on. The report emphasized two policies the Commission should address as a high priority, including the handling of armed individuals found unconscious or unresponsive and body worn cameras.

The report also recommended an additional nine policies for the Commission to consider, including

- confiscation of weapons from felons,
- complaints against departmental personnel, and
- pursuit driving.

The Commission has discussed some of these policy changes but has not yet fully addressed them.

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The Commission has implemented some City Charter and Municipal Code requirements, but it needs to fully implement additional requirements

The City Charter and the Municipal Code include approximately 105 requirements for the Commission to accomplish. The Commission has not fully implemented 13 key requirements and 23 additional requirements in the City Charter and the Municipal Code. Specifically, the Commission:

1. Has not hired an Inspector General because the Commission lacked the authority to hire;
2. Has completed some trainings, but not all required trainings;
3. Has not requested an annual report from the Chief of Police;
4. Has not requested the City Attorney to submit semi-annual reports;
5. Has not established a process for evaluating the performance of the Chief of Police and the Agency Executive Director;
6. Has not established a formal process for reviewing and commenting on the training OPD provides sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues;
7. Has not established a process for reviewing and approving administrative closures and dismissal of cases, and has not formalized its process for re-opening cases;
8. Has not formalized the process for reviewing OPD's budget;
9. Has not consistently complied with the Brown Act;
10. Has not met outside of City Hall at least twice a year;
11. Has not provided the Agency with formal policy guidelines on how to prioritize cases;
12. Has not established a mediation program for complaints; and
13. Has not developed written procedures to ensure compliance with OPD procedures for the release of audio and video tapes of Class I offenses.⁶

⁶ Class I offenses are the most serious offenses for which an officer can be presumptively terminated on the first offense. Class I offenses include uses of force, in-custody deaths, and profiling based on any of the protected classes.

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The Commission has not hired an Inspector General because the Commission lacked the authority to hire

The Municipal Code created an Office of the Inspector General to conduct audits to assess OPD's performance and adherence to constitutional policing practices. The Inspector General is also to audit or review OPD's policies and procedures, including patterns of non-compliance to assist the Commission in fulfilling its oversight duties.

The Inspector General is hired by and reports to the Commission. The Office of the Inspector General was to be established within 180 days after the Municipal Code went into effect (July 2018). The Commission has yet to hire the Inspector General position because it lacks the authority under the City Charter, without going through the City's Civil Service process.

The City Administration and third-party legal opinions place the Inspector General position under the purview of the City Administration and the City's Civil Service system. The legal opinion states that the City Administrator has sole and exclusive authority under the City Charter to develop the job description for the Inspector General and to initiate the process for securing approval of the position by the Civil Service Board. Further, the City Council is prohibited from interfering with the City Administrator's authorities and duties in that regard. The Commission, however, declined to move forward with the hiring process until it has full control of the position and its staff. This issue is further described in the section labeled, "The Commission's ability to meet its mandate has been limited by numerous factors."

Commissioners have received some training, but have not satisfied all the required training specified in the City Charter and the Municipal Code

The City Charter and the Municipal Code specify extensive training requirements for the Commissioners to complete. Within six (6) months of appointment, or as soon thereafter as possible, and apart from the first group of Commissioners and alternates, each Commissioner and alternate shall meet the requirements listed in the City Charter and the Municipal Code.

The City Charter and the Municipal Code require Commissioners to attend 27 separate training sessions listed below. The National Association for Civilian Oversight of Law Enforcement (NACOLE) highlights the importance of oversight agencies, including their Commission members, to take every opportunity to advance the knowledge and skills of those responsible for oversight.

As Exhibit 2 below shows, the Commissioners have not attended all required trainings.

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Exhibit 2 – Required Trainings for Commissioners⁷

All Commissioners Completed	Some Commissioners Completed	No Commissioners Completed
<ul style="list-style-type: none"> California’s Public Records Act City Charter Section 604 and Chapters 2.45 and 2.46 of the Municipal Code Contracting Policies and Procedures (OMC 2.45.190(N)) 	<p><u>Fewer than 5 Commissioners have not completed</u></p> <ul style="list-style-type: none"> Orientation Regarding Department Operations, Policies, and Procedures (CC 604(c)(9)) Procedural Justice (CC 604(c)(9)) Constitutional Due Process Administrative Hearing Procedure Confidentiality of Personnel Records and Other Confidential Documents Briefing on NSA and All Related Court Orders Constitutional Civil Rights Oakland’s Sunshine Ordinance CA’s Brown Act Complete the Department’s Implicit Bias Training Participate in a OPD “Ride-Along” <p><u>5 or more Commissioners have not completed</u></p> <ul style="list-style-type: none"> CA Political Reform Act Conflict of Interest Code CA’s Public Safety Officers Procedural Bill of Rights Act 	<ul style="list-style-type: none"> Best Practices for Conducting Investigations Conflict Resolution NACOLE Standards CA’s Meyers-Milias Brown Act and Public Administration of the Act City Memorandum of Understanding with the Oakland Police Officer’s Association City Civil Service Board Oakland Police Academy Curriculum Crisis Intervention Training POST, Laws of Arrest & Search and Seizure Racial Equity

As Exhibit 2 above shows, 37 percent (or 10 out of 27) of the required trainings have not been completed by any Commissioners. Further, all Commissioners completed 11 percent (or 3 of the 27), of the required trainings. It should be noted that some trainings offered by City Administration are scheduled during the day when some of the Commissioners are unable to take time off from their regular jobs. Additionally, Commissioners report other trainings were not made available to them until 2020. Those trainings include the City Civil Service Board and the California Meyers-Milias Brown Act and Public Administration of the Act.

⁷ Testing included the four previous Commissioners who either resigned or their terms expired.

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The Commission has not requested an annual report from the Chief of Police

Both the City Charter and the Municipal Code require the Commission to request an annual report from the Chief of Police. In addition, NACOLE suggests it is critical for a police oversight agency to present and analyze data from the Police Department annually. Although the City Charter does not list the type of information required of the Police Department, NACOLE recommends the following be included: police use of force, injuries to and deaths of persons in custody, all complaints and dispositions, stops, searches and arrest data that includes sufficient demographic data, and all criminal proceedings.

Although this item is on a pending list for the Commission to complete, it has not been addressed.

The Commission has not requested the City Attorney to submit semi-annual reports

The Municipal Code, under functions and duties, spells out minimally what the semi-annual reports from City Attorney are to include. These reports are to be presented to the Commission and the City Council. These reports should include:

- To the extent permitted by applicable law, the discipline decisions that were appealed in arbitration.
- Arbitration decisions or other related results.
- The ways in which the City Attorney has supported the police discipline process.
- Significant recent developments in police discipline.
- This semi-annual report shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records.

The Commission has not requested these reports from the City Attorney. These reports are important for the Commission to gather and analyze data. According to NACOLE, gathering and analyzing data is critical in order for the oversight agency to be effective.

The Commission has not established a process for conducting annual evaluations of the Chief of Police and the Executive Director of the Agency

The City Charter requires the Commission to periodically conduct a performance review of the Agency Directors, while the Municipal Code requires the Commission to conduct an annual performance review of the Agency Director, and of the Chief of Police. Per the Municipal Code, the Commission shall determine the criteria and any other job performance expectations for evaluating the Agency Director's and the Chief of Police's job performance and communicate

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those performance criteria and expectations to the Agency Director and the Chief of Police one full-year before conducting the evaluation. The Commission may, in its discretion, decide to solicit and consider as part of the evaluation, comments and observations from the City Administrator or other City staff, who are familiar with the Agency Director's or the Chief of Police's job performance. Responses to the Commission's request for comments and observations shall be strictly voluntary.

The Commission has not established a process for conducting evaluations of the Chief of Police or the Agency Director. In fact, the Commission has yet to finalize the criteria for evaluating the Chief of Police or the Executive Director of the Agency. It is important to set expectations and provide feedback on these critical positions. The Commission began to define the criteria for the evaluation of the Chief of Police and created a rough draft of the criteria in October 2019, but the Commission still has not finalized the criteria.

On February 20, 2020, the Commission, acting jointly with the Mayor, fired the Chief of Police without cause.

The Commission, as a body, did not formally review and comment on the education and training OPD provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. In addition, the Commission did not prepare and deliver to the Mayor, City Administrator, and the Chief of Police, a proposed budget for providing the education and training on the management of job-related stress.

The Municipal Code requires the Commission to review and comment on the education and budget related to the training OPD provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues.

The Commission, however, has not satisfied this requirement. An Alternate Commissioner attended meetings that discussed the above issues, but the Commission did not issue a formal comment. We also noted that the Commission shared their concerns with City Council regarding a contracted counselor for OPD. This occurred almost three months after the City Council extended the counselor's contract.

The Commission has not established a process for reviewing and approving administrative closures and dismissal of cases, and has not formalized its process for re-opening cases

The Municipal Code requires the Commission to review the Agency's dismissal and/or

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administrative closure of all complaints of misconduct involving Class I offenses, including any Agency investigative file regarding such complaints. Additionally, at the Commission's discretion and by five (5) affirmative votes, the Commission may direct the Agency to reopen the case and investigate the complaint.

NACOLE highlights the importance of gathering and analyzing data for effective agency oversight. This includes reviewing the number of complaints the oversight agency did not have jurisdiction to investigate, or cases where a finding could not be reached, as well as the number of complaints that were administratively closed and therefore not investigated.

The Commission does not have a documented process for approving administrative closures and/or dismissals and for re-opening cases. This process is critical to ensure all complaints of alleged misconduct involving Class I offenses receive adequate review. In fact, the Commission has not worked with the Agency to establish the criteria for which cases should be classified as administrative closures for its review and approval.

It should be noted that the term 'administrative closure' has no formal legal definition, nor is it defined in the City Charter. In addition, Agency staff explained the meaning of administrative closures changed over time, including when the CPRB was disbanded and the Agency was created. At one time, it represented investigations that were closed administratively without ever having been presented to the board for a hearing – akin to what is now sometimes described as a summary closure. Later, administrative closures came to mean investigations that were closed based on board deliberation of investigator recommendations and reports of investigation, as opposed to the few cases in which fact-finding hearings were still convened. Further, legal clarification is needed to define 'administrative closure' in order for the Agency to be able to comply with the requirements of the Measure.

The Commission has not formalized the process for reviewing OPD's budget

The City Charter states the Commission must review the Mayor's proposed budget to determine whether budgetary allocations for OPD are aligned with OPD's policies, procedures, customs, and General Orders.

The Commission has not reviewed and analyzed the Mayor's proposed budget to determine whether the budget is aligned with OPD's policies, procedures, customs, and General Orders. We noted, however, the Commission received a briefing on OPD's budget and asked questions during this presentation. The Commission however, did not provide an opinion as to whether the budget was aligned with OPD's policies, procedures, customs and General Orders.

The Commission has not consistently complied with the California Brown Act

State Law, the City Charter, and the Municipal Code require any legislative body to conduct its

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meetings in compliance with all requirements of the California Brown Act (Act), California Government Code 54950, and Article II of Chapter 2.20 of the Oakland Municipal Code. The Brown Act promotes transparency and public participation in local government. The Act specifically requires that agendas be posted at least 72-hours before regular meetings. The Commission is prohibited from discussing or acting on any items not on the agenda. In addition, the Act requires the body to report out on actions taken during closed sessions. The Act also prohibits the use of “reply all” functions in electronic communication. This action, replying to all, represents a quorum if the email communication includes three or more Commissioners.

We have noted several cases when the Commissioners address issues that are not included on the agenda. For example, Commissioners discussed OPD’s purchase of a BearCat⁸ vehicle and made a motion prohibiting the City from purchasing this vehicle. The agenda item on which they made this motion was on OPD’s policy on the deployment of the BearCat. The decision whether to purchase the BearCat was not on the meeting agenda and the Commission’s discussion about the purchase of this vehicle was a violation of the Brown Act.

Other issues noted include emails to all Commissioners, even though the Commissioners have been warned about not sending emails to all Commissioners or hitting ‘reply all’ to emails sent to all Commissioners from a third-party.

The Commission, at one time, forbade their outside counsel from sitting in on closed session meetings. While not a Brown Act violation, it is not a prudent practice and may lead to the Commission violating State Law. The purpose of an attorney attending closed session meetings is to provide guidance on potential violations of applicable laws and regulations, including the Brown Act. The Commission hired their own legal counsel at the end of 2019, who attends closed session meetings and reports pertinent information to the City Attorney.

Furthermore, the previous outside counsel for the Commission warned Commissioners of Brown Act violations. In one instance, the outside counsel admonished the Commissioners a total of 10 times of potential Brown Act and Sunshine ordinance violations regarding agenda setting and making motions on items that were not on the agenda. The Commissioners told the outside counsel to “stop talking” twice during the meeting and ignored counsel’s words of caution. The Commission proceeded to pass a motion in complete disregard to the outside counsel’s advice that they were violating the Brown Act and the Sunshine ordinance.

⁸ BearCat refers to a ballistic engineered armored response counterattack truck. It is a wheeled armored personnel carrier designed for military and law enforcement use and is currently used by over 700 federal, state and local law enforcement agencies to respond to shooter scenarios, barricaded suspects, response and rescue, and high-risk warrants.

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The Commission did not meet at least twice per year outside of City Hall

The City Charter and the Municipal Code require the Commission to convene at least two meetings per year outside of City Hall. The purpose of this requirement is to solicit community testimony and input on community policing, build trust between the community and OPD, and other similar and relevant subjects as determined by the Commission. These offsite meetings are to be designated as special meetings subject to the 10-day agenda notice requirement for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code and include an agenda item titled "Community Roundtable." Since the Commission's inception, it has only convened one meeting each year in 2018 and 2019 outside City Hall that met the requirements specified in the Municipal Code. In 2019, a community group convened a special meeting, in which Commissioners attended, on the legal rights of residents when dealing with police and on OPD's practices of policing the homeless community. However, this meeting did not meet the requirements of the City Charter and Municipal Code.

As noted above, the purpose of the community meeting requirement is to solicit more community input. The Commission, however, does not have a formal plan to solicit more community participation. Specifically, it has not established clear goals and objectives for achieving more community participation or community outreach, identified specific steps to increase participation, or measured and reported on the effectiveness of its outreach efforts.

The Commission has not provided the Agency with formal policy guidelines on prioritizing cases

Per the Municipal Code, the Commission shall provide policy guidelines to the Agency Director for assistance in determining case prioritization. Guidelines for case prioritization should be established to ensure timely review of critical cases.

The Commission has not provided the Agency guidance on how to prioritize cases. Thus, the Commission has not provided the Agency with sufficient guidance during a time when the Agency has operated at less than full staffing and below the staffing requirements established in the City Charter.

The Commission has not established a mediation program for complaints

In association with the Agency Director and in consultation with the Chief of Police or the Chief's designee, the Commission shall establish rules and procedures for the mediation and resolution of complaints of misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed by-laws prior to implementation.

The Commission has not established a mediation program for complaints. Mediation would be

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beneficial as a resource to ensure investigative resources are better allocated. By not screening cases for mediation, there is a missed opportunity for resolving some cases in a way that promotes civilian understanding and saves the Agency investigative time.

The Commission has not developed written procedures to ensure compliance with OPD procedures for the release of audio and video tapes of Class I alleged offenses

The Municipal Code requires the Commission to follow OPD policies and procedures regarding the release of videotape and audio tape recordings of alleged Class I violations committed by police officers. However, the Commission has not documented any such procedures.

Additionally, the Municipal Code requires the Agency to videotape the interviews of all subject officers who are alleged to have committed a Class I offense. The Commission is responsible for overseeing the Agency. The required videotaping, however, was not followed until July 2019. In fact, approximately 100 allegations of Class I offenses occurred during the audit period that should have been videotaped but were not. This issue is discussed further in Finding 3.

The Commission's ability to meet its mandate has been limited by numerous factors

The Commission's ability to meet its mandate has been limited by numerous factors. These factors include:

- The challenge of creating a new organization;
- The Commission lacks senior-level staff;
- Conflicting language in the City Charter and the Municipal Code have led to a stalemate in the hiring of the Inspector General;
- The City lacked a formal process and structure for establishing the Commission;
- The working relationship between the Commission and the City Administration needs improvement; and
- The Commission has not established a sufficient structure to focus its efforts on its key duties and responsibilities.

The Commission is a new organization experiencing organizational challenges

The Commission's first meeting was on December 13, 2017. As a new body, it needed to organize itself to fulfill its mission, including establishing the responsibilities of its Commissioners. New organizations typically experience growing pains in getting organized. It is usually the

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responsibility of the leadership to provide direction, assign roles, and propose policies and procedures; however, the roles of the Commissioners, including its leaders are not defined. Additionally, it is important to note that the Commission has experienced a high turnover of dissatisfied Commissioners, which has contributed to its lack of progress.

The Commission lacks senior-level staff

The City Charter states that the City shall allocate a sufficient budget for the Commission, including the Agency, to perform its functions and duties as set forth in this section. The City Administration, however, did not provide adequate administrative support to the Commission. The Commission continues to be a part-time body without any senior administrative staff. With full-time careers and other responsibilities, Commissioners cannot be expected to manage the daily requirements of the Commission. City Administration assigned one administrative staff member in November 2018 to assist the Commission with duties such as agenda setting and the scheduling of trainings. Another staff member is a liaison between the City Administration and the Commission, and outside counsel supports the Commission during public meetings to ensure they receive guidance in complying with the California Brown Act and other regulations. However, the Commission lacks senior administrative staff to guide it in defining its mission, goals, and priorities to ensure full and timely compliance with the City Charter and the Municipal Code.

Conflicting language in the City Charter and the Municipal Code led to a stalemate in the hiring of the Inspector General

The Municipal Code established the Office of the Inspector General and assigned responsibility for hiring of the position to the Commission. The Oakland City Charter, however, establishes the City Administrator as the hiring authority. Thus, the City Charter and the Municipal Code were in conflict regarding the authority to hire the Inspector General.

To provide the Commission with hiring authority for this position, the City Council, in April 2019, approved a resolution directing the City Administrator to release the Inspector General job description as written by the Commission. The City Attorney did not approve this resolution as to its form and legality. Then, the City Attorney hired an outside attorney to opine on who has authority to hire the Inspector General. The outside attorney opined that the City Administrator has the authority for the City's hiring. Next, in July 2019, City Council passed a resolution updating the Municipal Code by granting the Commission the ability to contract with third parties. This change gave the Commission the ability to hire contractors to complete projects the Office of the Inspector General would be responsible for in the interim, while the City and the Commission worked to resolve this issue. The Commission, however, has not opted to move forward with hiring the Inspector General until it gains full-hiring authority for the position through a City Charter amendment.

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The City lacked a formal process for establishing the Commission and other oversight bodies

The City of Oakland has not established formal processes for seating oversight bodies such as the Commission. As a result, the Commission was not sufficiently oriented to carrying out its important responsibilities. The Commissioners did not even have an opportunity to meet prior to being seated in December 2017.

The International City/County Management Association (ICMA) issued a comprehensive publication entitled “Making It Work: The Essentials of Council-Manager Relations” (publication). Although this publication is aimed at improving City Council-Manager relations, the publication is relevant to creating a successful working relationship between the Commission and the City Administration. The publication stresses the importance of an informative orientation program to help new council members (or Commissioners) adjust to their new roles and responsibilities. The publication also notes that an orientation program helps new council members establish effective working relationships with peers on the governing board and staff.

The publication also recognizes the importance of the City Administration in helping officials—especially the new ones to understand their role as it is not unusual for individuals to not have governance experience. Some of the Commissioners did not have policy-making or governance experience in their backgrounds. Thus, the City Administration can help to educate Commissioners on their role by creating an orientation program.

The publication addresses some of the key components of effective orientation programs to include:

- Meetings with the local government manager and other council appointees
- Orientation notebook
- Department presentations
- Organizational/departmental videos

The publication also includes topics to cover with council members that are relevant to the Commissioners. We have modified the text to include Commissioners instead of council members. These include, but are not limited to the following:

- Legal requirements and conflicts of interest
- Expectations regarding ethical conduct

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- Provisions regarding sunshine laws or open meeting laws
- City norms, policies, procedures, and by-laws
- Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order)
- Commissioners' roles regarding its own committees and serving on other boards and committees
- Media relations (including social media)
- Contact and communication with staff

The City, with assistance from the Commission, needs to develop a formal orientation program to assist newly-appointed Commissioners to assume their role. Moreover, the City should establish such a formal program for newly-elected officials and other oversight bodies in the City.

The working relationship between the Commission and City Administration needs improvement

The ICMA publication mentioned above notes that a productive and positive relationship between local government professional managers and elected officials results in greater translation of policy decisions into action. On the other hand, when elected policy makers and the manager do not work well together, it invariably ripples through the organization and impacts effectiveness at all levels—ultimately resulting in the public not being well-served.

Although the Commissioners are not elected officials, the nature of the relationship between the City Administration and the Commission are similar to the relationship between City Councils and City Managers. That is, the Commission has an oversight role that includes policy direction. On the other hand, the City Administration is charged with assisting the Commission in achieving its goals and objectives. Therefore, it is critical for the City Administration and the Commission to develop an effective working relationship, especially considering the important role that the Commission is charged.

The current relationship between the Commission and the City Administration needs improvement. For example, City staff complained that the Commission does not understand their role. As mentioned in Finding 2, Commissioners have tried to direct, or directed staff, below the Executive Director of the Agency or the Chief of Police. City staff have also complained about the Commission getting into matters that are beyond their prescribed duties.

We also observed that the Commission has refused to listen to the advice of the City Attorney's

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Office on issues such as compliance with the Brown Act. Moreover, the Commission refused to allow the outside council hired by the City Attorney, to sit in on closed sessions because of a lack of trust. Finally, a member of the City Attorney's Office quit attending meetings because of a perceived lack of respect received from the Commission.

The Commission hired their own legal counsel at the end of 2019, who attends closed sessions and reports pertinent information to the City Attorney. This has improved the relationship between the Commission and the City Attorney.

The Commissioners have also expressed frustration with the City for not providing sufficient administrative support to carry out their duties, especially considering they are a part-time body. In addition, the Commission believes the City Administration is undermining their work and not providing timely information when requested.

The City Administration and the Commission need to repair their relationship. Without an improvement in their relationship, the trust level will remain low, policy direction will remain unclear, conflict over roles will continue to escalate, and a lack of clarity regarding organizational direction will continue, affecting the Commission's effectiveness and the public's confidence in the City.

To improve its relationship, the City Administration and the Commission should convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.

The Commission has not established a sufficient structure to focus its efforts on its key duties and responsibilities

The Commission has not established a sufficient organizational structure. Specifically, the Commission has not:

- Developed formal goals and objectives
- Developed a strategic plan
- Developed annual workplans
- Structured its meeting agendas around its core functions
- Developed sufficient policies and procedures, or by-laws, for carrying out its duties

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- Developed a performance reporting system to assess and measures its progress
- Verified the City has provided an adequate budget to meet the mandates of the Commission and the Agency

The Commission has not established formal goals and objectives

NACOLE recommends any new civilian oversight agency clearly define its goals and what it hopes to accomplish to effectively carry out its mission.

The Commission has not established formal goals and objectives to measure whether police oversight activities are having positive effect on policing in Oakland. Without properly defining goals and objectives and documenting its strategy into an annual work plan and a strategic plan, the Commission is hindering its ability to be an effective oversight body.

At its September 2019 retreat, the Commission discussed several topics that could be developed into measurable goals and objectives. For instance, the Commission discussed information from the City of Oakland's Equity Indicators 2018 report,⁹ in which police response times, stops, and use of force showed troubling disparities by race. Improving OPD's performance in these areas could be an opportunity where the Commission could develop measurable goals and objectives.

The Commission lacks a strategic plan

A strategic plan assists an organization in providing a sense of direction and defining the activities to achieve stated goals and objectives. Other police oversight agencies, such as the cities of Portland and Seattle, have strategic plans.

Although the Commission has discussed a strategic plan, it has yet to formalize one. During its September 2019 retreat, mentioned above, the Commission identified areas of concern such as police response times, stops, and use of force, which showed troubling disparities by race. By establishing written goals and objectives to measure improvement, the Commission could then develop strategic initiatives, in consultation with OPD, to improve OPD's performance in these key areas.

The Commission lacks annual workplans

Annual work plans identify an organization's goals for the next year and strategies for achieving them. The importance of a work plan is that rather than a big, expansive vision statement, it focuses on attainable goals and sets a deadline for achieving them. It provides a concrete foundation on which to build the coming year. Annual work plans also provide transparency

⁹ Full report can be found <https://cao-94612.s3.amazonaws.com/documents/2018-Equity-Indicators-Full-Report.pdf>.

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around the work to be accomplished.

The Commission has not established annual workplans.

The Commission needs to improve its agenda management practices

The Commission needs to structure their agenda around its key functions. Like the City Council and City Council committees, agendas should be planned months in advance, so staff can plan and prepare for these meetings.

The Commission's agenda setting process is haphazard. Frequently, Commission members put together the next meeting's agenda at the Commission meetings.

The Commission needs policies and procedures, or by-laws, for carrying out its duties

The Commission needs to define how it will carry out its duties. Some of these duties include, but are not limited to, providing feedback on OPD policies, procedures, and General Orders, making discipline decisions when OPD and the Agency do not agree on the results of investigations and complying with all City Charter and Municipal Code requirements.

The Commission has established limited policies and procedures defining how it is going to carry out its duties.

The Commission needs a process for assessing its performance

It is important to define and establish the mission and goals of an entity for successfully carrying out its responsibilities. This should go hand in hand with strategic planning to ensure that the work plan is in alignment with the entity's mission. Once these are established, there should be performance reporting to track and monitor progress.

The Commission includes information on its website regarding key activities undertaken. The Commission, however, has not formally established written goals and objectives, and has not established annual work plans and a strategic plan to achieve these goals and objectives. Without these critical pieces in place, the Commission cannot adequately define reporting metrics to monitor its performance.

The Commission has not established a clear budget process with the City to ensure adequate funds are budgeted to effectively operate the Commission and the Agency

The Municipal Code and the City Charter mandate that the City provide a sufficient budget for the Commission, including the Agency, to perform its functions and duties. The Commission has not established a clear process for submitting and reviewing their budget with the City. The

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Commission formed an ad hoc budget committee in 2019 to develop the Commission's budget, but the Committee appeared to lack an understanding of the City's budget process and the resources needed to meet the oversight responsibilities of the Commission and the Agency.

Conclusion

The City Charter and the Municipal Code grant the Commission powers to propose changes and approve or reject OPD's policies, procedures, customs, or General Orders, that fall within categories such as the use of force, use of force review boards, or profiling based on any of the protected characteristics, First Amendment assemblies, or federal court orders such as the Negotiated Settlement Agreement. Through December 2019, the Commission reviewed and modified two policies and modified another one in 2020. Moreover, the Commission has not fully implemented requirements in the City Charter and the Municipal Code, and the Commission's ability to meet its mandate has been limited by numerous factors.

Recommendations

To increase its effectiveness and ensure compliance with the City Charter and the Municipal Code, the Commission should implement the following recommendations:

1. Propose to add a senior level staff to assist the Commission in implementing its annual work plan and strategic plan, in addition to managing the day to day responsibilities of the Commission.
2. Develop formal goals and objectives to measure whether the Commission is having a positive effect on policing in Oakland.
3. Develop a strategic plan that identifies what the Commission needs to do to achieve its goals and objectives, including implementing all City Charter and Municipal Code requirements and including a plan for outreach to the community.
4. Develop annual workplans to address its strategic plan goals.
5. Develop policies and procedures for its agenda management process, including compliance with the Brown Act and ensure agenda items are within its jurisdiction and are prioritized.
6. Develop policies and procedures, or by-laws, for conducting all aspects of the Commission's oversight function, including:
 - a. Establishing by-laws that govern how the Commission should operate, including defining the roles of the Chair, the Vice-Chair, and its committees.

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- b. Developing an effective process to review OPD's policies, practices, customs, and General Orders, to identify and prioritize areas for improvement and prioritize new policies and practices.
 - c. Monitoring the training requirements of Commission members and consider providing some trainings online so that Commissioners can take them at their convenience
 - d. Requesting and reviewing reports from the Chief of Police and the City Attorney
 - e. Evaluating the Chief of Police and Agency Director at least annually
 - f. Reviewing and commenting on the education and training of OPD's sworn employees regarding the signs and symptoms of stress, drug abuse, alcoholism, and emotional health issues
 - g. Reviewing and approving administrative closures and dismissal of cases
 - h. Reviewing OPD's budget to ensure that it aligns with OPD's policies, procedures, customs, and General Orders
 - i. Ensuring full-compliance with the Brown Act
 - j. Meeting, as a body, at least twice per year outside of City Hall
 - k. Providing guidance to the Agency on how to prioritize cases
 - l. Establishing a mediation program for complaints
 - m. Releasing audio and video tapes of Class I alleged offenses
7. Prepare an annual report summarizing the Commission's progress in achieving its goals and objectives, as well as its progress in implementing its strategic plan and annual workplans. This information should be included on the Commission's website.
8. Develop a budget proposal including sufficient resources to assist the Commission and Agency in carrying out duties.

To ensure new Commissioners and oversight bodies are prepared to assume their duties prior to being seated, the City Administration, with the assistance of the Commission, should:

9. Establish a formal orientation program which includes the following:
- Meetings with the City Administrator and other Commissioners

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- Orientation notebook
- Department presentations
- Organizational/departmental videos

The orientation program should also cover issues relevant to Commissioners such as:

- Legal requirements and conflicts of interest
- Expectations regarding ethical conduct
- Provisions regarding sunshine laws or open meeting laws
- City norms, policies, procedures, and by-laws
- Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order)
- Commissioners' roles regarding its own committees and serving on other boards and committees
- Media relations (including social media)
- Contact and communication with staff

In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.

To improve the working relationship between the City Administration and the Commission, the City Administration and the Commission should:

10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.

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Finding 2: The Commission's Powers and Duties Should Be Clarified

Summary

The City Charter established the Commission to oversee the Oakland Police Department in order to ensure OPD's policies, practices, and customs conform to national standards of constitutional policing. As noted in Finding 1, the Commission has a mandate to review, modify, and approve OPD's policies, procedures, and General Orders. In its first two years, the Commission reviewed and approved two policy changes through December 2019 and approved another change in 2020. In addition, the Commission has yet to fully implement various City Charter and Municipal Code requirements. We also noted the Commission has not established a sufficient structure for focusing its work on key priorities such as establishing goals and objectives, strategic plans, annual workplans, structuring its meeting agendas around key priorities such as reviewing and commenting on OPD's policies, and developing policies and procedures or by-laws for carrying out its duties. Thus, the Commission has significant work to accomplish.

We also found the Commission has involved itself in other matters that limit its ability to address higher priority issues. For instance, the Commission has involved itself with administrative duties and has tried to direct staff in the Agency and OPD. Additionally, the Commission has involved itself in areas that may not be consistent with its prescribed duties or are not the best use of its limited time and resources.

Finally, the Commission has difficulty managing their meetings and has not adopted code of conduct or a comprehensive social media policy. Clarifying the Commission's powers and duties will ultimately assist them to address their higher priorities.

The Commission has engaged in administrative activities and directed OPD and Agency staff

City Charter Section 604 (a), states the Commission was established to oversee the Oakland Police Department in order to ensure that its policies, practices, and customs conform to national standards of constitutional policing. The Commission's administrative responsibilities are primarily limited to directing the Agency Director and the Chief of Police. Additionally, the Commission has the administrative power to adjudicate disputes between the Agency and Internal Affairs Division (IAD)¹⁰ by forming a disciplinary committee, and the authority to fire the

¹⁰ The Oakland Police Department Internal Affairs Division (IAD) investigates all complaints of alleged misconduct submitted by citizens. Citizen complaints related to alleged Class I offenses are conducted by IAD and the Agency concurrently.

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Chief of Police and the Agency Director. Thus, the City Charter clearly established the Commission as an oversight body.

Although its primary role is oversight, the Commission has involved itself in administrative activities and, at times, directed staff below the Chief of Police and the Agency Director. Commissioners have also solicited bids from firms to conduct work for the Commission.

The Commission has solicited bids on at least three occasions

The Commission has solicited bids on at least three occasions. For example:

- A Commissioner solicited proposals from firms to hire an investigator to assist the Agency in one of its investigations.
- A Commissioner solicited bids to hire a firm to audit the Agency.
- A Commissioner solicited bids to hire a firm to investigate the case known as the Bey Case Review (Bey case). The Commissioner used a list of investigative firms provided by the plaintiffs.

The Commission should not be directly procuring or soliciting bids for contracts. Government procurement activities must adhere to strict federal, state and local regulations. Splitting responsibilities for preparing and awarding or authorizing procurement contracts is to ensure effective checks and balances in the procurement process to prevent errors, conflict of interest, or fraud and corruption.

It should be noted that the Commission for a period of time did not have administrative staff to perform some of these administrative duties and may have been unclear on how to properly proceed.

The Commissioners on multiple occasions directed OPD staff to attend meetings or perform other duties

The Commissioners on multiple occasions directed OPD staff to attend meetings or perform other duties. For instance:

- The Chair of the Commission directed two Deputy Chiefs of Police to attend a meeting with a family that had reported a missing family member. Specifically, in an email, a Commissioner notified two OPD Deputy Chiefs that the Commissioner was committed to be the liaison and would need to meet with the Deputy Chiefs to get up to speed on the case.

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- The Commission directed an OPD Manager to attend a Commission meeting even though the Manager had planned to be on vacation.
- The Commission directed the Chief of Police to assign a specific Deputy Chief to be the liaison between OPD and the Commission after the Chief of Police had already assigned a different staff member to be the liaison. Although the Commission has the responsibility for evaluating the Chief of Police and can fire the Chief of Police, the Commission should not be directing the Chief of Police on how specific staff should be deployed. The Chief of Police, however, may feel pressure to comply with the Commission's directives because the Commission can fire the Chief of Police.

The Commission has no direct authority over Agency and OPD staff below the Agency Director and the Chief of Police and should not be reaching out directly to staff. If the City Council conducted these activities, they would be violating the City Charter, and could be subject to prosecution.

A publication by the International City/County Management Association (ICMA) addresses the issue of council members reaching out directly to staff. Specifically, the publication states, "One of the most common and challenging issues is when one or more elected officials 'end run' the manager in reaching out directly to staff." The publication further states that it is a fundamental principle of the council-manager form of government that council members will not direct staff other than through the manager.

Consistent with this principle, the Oakland City Charter Section 207 and 218 specifically prohibits the City Council from involving itself in administrative activities and directing City staff. Specifically, the City Charter states, "Neither the City Council nor any Council member shall give any orders to any City subordinate under the direction of the City Administrator or other such officers."

The ICMA provides guidance to address this issue. As mentioned in Finding 1, the City needs to have a strong orientation program to assist Commissioners in understanding their role, including that they should not be contacting staff directly. Furthermore, the City Administration needs to establish protocols for addressing situations in which Commissioners cross the line and communicate directly with City staff. These protocols include guidance on:

- Reminding staff to not respond to Commissioners without authorization and for notifying department officials when Commissioners contact staff directly
- Addressing situations when Commissioners contact staff directly
- Elevating the matter to the Commission, the City Council, or to the City Attorney

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The provisions in the City Charter that prohibit the City Council from engaging in administrative activities and directing staff do not specifically apply to the Commission or other oversight bodies. Therefore, we recommend the City Council modify the City Charter to prohibit the Commission from interfering in OPD's and the Agency's administrative matters. The City Council should also modify the City Charter to prohibit the Commission from directing the staff below the Chief of Police and Agency Director. We have addressed this issue in Finding 5, Recommendation 39.

The Commission has taken actions that do not appear to be consistent with its authority

The Commission has taken actions that do not appear to be consistent with their authority. For instance:

- In May 2019, OPD requested the City Council's approval to use grant funds to purchase a Mobile Command vehicle and a BearCat vehicle. The City Council approved the purchase of the Mobile Command vehicle but did not approve the purchase of the BearCat. Instead, the City Council requested the Commission to review the policy on the use of the BearCat and other armored vehicles. Instead of reviewing the policy, the Commission passed a motion denying the purchase of the vehicle. The Commission also passed a motion to direct the Chief of Police to provide a list of all the grants (unrelated to the purchase of the BearCat), that OPD was going to apply for, so the Commission could review and approve them. The Commission passed these motions without discussing OPD's policy on deploying the BearCat, as the City Council had requested. Furthermore, the actions taken by the Commission are Brown Act violations (not properly noticed) and outside the scope of its authority. The Commission does not have the authority to deny the purchase of the BearCat or to determine which grants the City can apply for. This authority rests with the City Council. The Commission, as the City Council requested, should have worked with OPD to develop a policy on the use of the BearCat and other such armored vehicles.
- The Commission subpoenaed records related to the Pawlik investigation. This is a case that was investigated by both IAD and the Agency. Both entities generally reached the same conclusion exonerating the officers.¹¹ The Commission then subpoenaed documentation between IAD and the Agency with the purpose to investigate the Agency's and IAD's handling of their investigations. The Commission does not have the authority to investigate the Agency's and IAD's handling of their investigations. The Commission's role, as described in the City Charter, is to determine discipline when IAD and the Agency

¹¹ Although the Agency and IAD generally exonerated the officers, the Agency and the Chief did recommend sustaining two officers for inadequately supervising the incident. The Agency recommended that these two officers be demoted, while the Chief never reached the stage at which she would have recommended discipline.

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disagree on findings and/or proposed discipline.

The Commission's powers and duties need clarification. We recommend the City Council should clarify and identify the Commission's authority and responsibilities, as well as those that are not consistent with its authority and responsibilities. We addressed this issue in Finding 5, Recommendation 40.

The Commission could make better use of its limited time and resources

We also identified other areas in which the Commission has involved itself in matters that may not be the best use of its limited time and resources. For instance:

- The owner of a night club complained at a Commission meeting regarding the security requirements and the permits at the night club. Based on the night club owner's complaint, the Commission discussed this issue for 16 minutes at a Commission meeting, asked OPD questions about the deployment of officers, and requested OPD to write a report on this issue to be presented at a later Commission meeting. Since this matter was not on the meeting agenda, the Commission violated the Brown Act by engaging in a discussion and involving City staff. Furthermore, this issue seems outside the Commission's role to oversee OPD's policies, procedures, and customs. The Commission seemingly addressed this issue because someone complained at a Commission meeting. A more appropriate action would have been to engage the City Administration and OPD on policies around the permitting of night clubs in the City.
- The Commission became involved in a missing persons case. A family of a missing person complained to the Commission about OPD's inaction locating the missing person. The Chair of the Commission directed OPD staff to attend a meeting with the missing person's family. One of the Commissioners also attended the meeting and as mentioned above, directly involved the Commission in the OPD's handling of this case. Although this was a tragic circumstance, the Commission's involvement in this matter is not entirely consistent with the Commission's role as established in the City Charter and the Municipal Code. A more appropriate action for the Commission to have taken would have been to review OPD's missing person's policy, not the specifics of the Bandabaila case, and direct the family to work with the City Administration or direct the Police Department to report back to the Commission on how the City was addressing this missing person's case.
- The Commission opened an investigation to determine if there is sufficient evidence to re-open multiple Agency investigations for the Bey Case. The original case was forwarded to the Community Police Review Board (CPRB) and to the IAD in 2007. Both agencies administratively closed the case because the complaint did not allege misconduct by any

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specific Oakland police officer, rather it made a broad brushstroke allegation against the entire department for not solving a homicide case to the plaintiffs' satisfaction and the plaintiffs' main concern was the general investigation process being slow and not progressing after several years.

The plaintiffs filed another CPRB complaint in September 2011. CPRB forwarded the complaint to IAD. The complaint was re-opened, and no new allegations were mentioned or discovered. Both agencies administratively closed the complaint in 2012.

In November 2012, the CPRB sent a letter to the US Department of Justice (DOJ) recommending an investigation into the complaints by the plaintiffs to the DOJ's Civil Rights Division. The DOJ in 2013 chose not to launch an investigation.

In 2013, the plaintiffs contacted the Office of the Independent Monitor and Compliance Director who oversees OPD pursuant to the NSA. The Monitor's Office forwarded the complaint to IAD and IAD opened a new case. In August 2013, the case was closed as the investigator could not sustain findings against individual officers because the investigator did not have evidence of individual wrongdoing regarding the investigations of the 2004 murder of Waajid Bey and the 2005 attempted murder of John Bey. The investigator was unable to speak to officers associated with these investigations, as they were no longer employed by OPD and they did not respond to the investigator's requests for an interview.

Although the previous determination for administratively closing the case was determined to be appropriate, the 2013 investigation found OPD did not have proper policies and procedures in place to ensure the investigations were completed thoroughly and that proper documentation was retained to ensure follow up investigations could be completed. The CPRB sustained an allegation against the officers for non-performance of their duties; however, the subject officers were no longer employed by OPD. In 2013, the case was resubmitted to CPRB and CPRB administratively closed the case again in July 2014.

In 2014, plaintiffs contacted the Office of the Independent Monitor to express dissatisfaction with IAD's investigation and the Independent Monitor and Compliance Director assigned OPD to address the shortcomings in the investigation.

In March 2019, at the request of the plaintiffs, the Commission sent a letter to the Office of the Independent Monitor requesting an investigation into the substance of the plaintiffs' complaint.

The case has gone through State and Federal appellate courts and all appeals have been denied. The most recent judgement was issued by the United States District Court -

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Northern District of California on July 30, 2019 and determined that the defendant (the City of Oakland) has satisfied its burden on summary judgement of demonstrating the absence of evidence on an essential element of the plaintiffs' claims, which related to racial and religious animus towards black Muslims.

Regardless of this extensive case history, the Commission contracted with a firm for \$49,999 to determine if there is sufficient evidence to re-open the case regarding instances of alleged racial and religious profiling. The Commission addressed this issue after the plaintiffs raised this matter in open forum at numerous Commission meetings. The Commission put the plaintiffs' complaint on at least 12 Commission meeting agendas.

It is a questionable use of City monies and time to review a matter that occurred 15 years ago and has been appropriately adjudicated. It is not clear what benefit the City will derive from this investigation and it could set a precedent for other complainants to request their cases be re-opened.

The Commissioners believe several of these matters are within their purview because these issues are related to racial profiling.

We believe the Commission should take a more global view in addressing racial profiling in law enforcement in Oakland. To provide a greater impact, they should establish principles to guide their work in addressing racial profiling. For example, the Ontario Human Rights Commission (OHRC) established the following principles for addressing racial profiling in law enforcement:

- **Acknowledgement:** Substantively acknowledging the reality of racial profiling, including the impact it has on individual and community well-being and trust in law enforcement, and recognizing the specific impact on Indigenous peoples and racialized communities and individuals
- **Engagement:** Active and regular engagement with diverse indigenous and racialized communities to obtain frank and open feedback on the lived experience of racial profiling and effective approaches to combatting it
- **Policy guidance:** Adopting and implementing all appropriate standards, guidelines, policies, and strict directives to address and end racial profiling in law enforcement
- **Data collection:** Implementing race data collection and analysis for identifying and reducing disparity, and managing performance

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- **Monitoring and accountability:** Regularly monitoring racial profiling, and setting robust internal accountability mechanisms at the governance, management, and operational levels
- **Organizational change:** Implementing multi-faceted organizational change (for example, in relation to training, culture, hiring, incentive structures, etc.) consistent with the OHRC's guide, Human rights and policing
- **Multi-year action plan:** Forming anti-racist action plans featuring initiatives geared toward achieving short- and long-term targets for advancing all these principles

Following such an approach would provide the Commission with a more systematic approach for addressing racial profiling, rather than on a case-by-case approach. Furthermore, such an approach is more consistent with the Commission's mandate to review and modify OPD's policies.

The Commission needs to better control its meetings and adopt code of conduct and social media policies

In our review of Commission meetings, we noted that Commissioners have also made disparaging remarks to other Commissioners, the public, and City staff as described below:

- In a March 2019 meeting, several Commissioners became involved in a heated argument. Commissioner A believed that the discussion on the dais was going beyond the scope of the agenda item being discussed—which would be a Brown Act violation. The agenda item was on Standing and Ad Hoc Committee assignments. Commissioner B had concerns about the Standing Committee not meeting twice a month as Commissioner B felt the Committee had agreed upon. Commissioner A brought up that this discussion was beyond the scope of the agenda item. Commissioner A then asked for legal clarification. Commissioner B became combative and responded, "You're out of order." And "...you need to shut your mouth." As the discussion continued, Commissioner B again told Commissioner A to "Shut your mouth..." and then threatened Commissioner A by stating, "You've got one more time to disrespect me up here and you're going to see."
- During the same March 2019 meeting, the Alameda County Public Defender addressed the Commission regarding the policy change on traffic stops for people on probation and parole. In response to a Commissioner's comments that what the policy is addressing doesn't affect people who look like him and that it affects people that look like her, the Public Defender stated, "he is black and understands the negative impacts of being stopped by the police." This Commissioner responded, "Because you have the skin color of a black man, okay. But that don't mean you live like a black man."

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- In other instances, Commissioners have been disrespectful to the Chief of Police and other OPD staff. For example, during her presentation on January 10, 2019, the Chief of Police states that her number one goal internally is to become fully staffed. Her number two goal is to take Oakland through an accreditation process called, “Commission on Accreditation for Law Enforcement Agencies” (CALEA). CALEA is the national gold standard for police accreditation. The Chief of Police’s plan was for OPD to complete this accreditation in 2020. However, the Chief of Police’s goal wasn’t received well by all Commissioners. Commissioner A commented “Getting an accredited validation from some place that I’ve never heard of doesn’t really mean much to me. If you want validation, you should get it from the community you serve. Even if we’re under the NSA, if you can get some accreditation from the community members and you can have community members come in here and say you know, they are a gold star agency, then that’s impressive.”

The Commission has not adequately controlled its meetings and agendas

Robert’s Rules of Order, which is a guide for conducting meetings and making decisions, strongly encourage government bodies to follow structured guidelines including maintaining and following a strict agenda, using motions to discuss new items of business, and postponing motions that are not to be discussed further at the meeting. The guidelines provide structure to ensure more efficient and impactful work by the government body.

Over the last two years, the Commission meetings have averaged over four hours in length, with the meeting average length not improving over time. The Commission has not adequately planned their agendas. Specifically, we identified instances where agenda topics are not focused on priorities, such as its mandate to review and modify OPD’s policies and public comment time limits are not always enforced.

The Commission has not established a code of conduct

The Western Cities Magazine, published an article by the League of California Cities in December 2019, that stressed the importance of a code of conduct for oversight bodies and how to create one. Specifically, the article states:

“Many cities have adopted codes of ethics for their organizations and city councils, which is positive and appropriate. Some are taking the additional step to document how elected leaders and staff are to behave in carrying out their duties. These policies are called codes of conduct or council guidelines or norms. In such policies, the local government leadership sets the rules and expectations for how they govern the cities—and defining a civil and respectful governing culture consistent with best practices.”

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The article also advises to avoid attempting to address every eventuality and to keep the code general and user friendly.

The following examples offer some typical elements to include in a code of conduct:

- Demonstrate honesty and integrity in every action and statement;
- Inspire public confidence in our city government;
- Work for the common good, not personal interest;
- Respect the proper roles of elected officials and city staff in ensuring open and effective government;
- Disagree agreeably and professionally (use appropriate language, tone, nonverbal gestures, etc.);
- Approach the business of governing in a professional manner—conduct business in a way that brings honor to the institution of government;
- Work together as a body, modeling teamwork and civility for our community;
- Work for a win-win—strive for consensus and seek common ground; and
- Honor “discussion” before “decisions”—delay making formal motions until initial discussions have taken place.

The article also addressed how the code of conduct is enforced—informally and/or formally—is just as important as the principles expressed in the code of conduct.

Although the Commission does not have a code of conduct, the City Charter gives authority to the City Council to remove members of the Commission for cause, after conducting a hearing, with at least six affirmative votes. The City Charter also gives the Commission the authority to remove a Commissioner. It may, with a majority vote, remove a Commissioner for the conviction of a felony, misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year, except on account of illness or when absent by permission.

The Commission has a limited social media policy

All members that sit on Boards and Commissions represent the City and therefore must be

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conscientious of how they present themselves in social media like Facebook and Twitter. The Public Ethics Commission's handbook for Board and Commission members states individual members "should not present their personal views or recommendations as representing the board or commission unless their respective board or commission has voted to approve such a position or action."

The current social media policy prepared by the Commission is very limited in scope and does not address the use of personal social media accounts. Maintaining a professional social media presence is important because Commissioners could make comments that could later hinder the independence and objectivity of Agency investigations.

Conclusion

The Commission has significant work to accomplish. We found, however, that the Commission has involved itself in other matters that limit its ability to address higher priority issues. For instance, the Commission has involved itself with administrative duties and has directed staff in the Agency and OPD. Additionally, the Commission has involved itself in areas that may not be consistent with its prescribed duties or are not the best use of its limited time and resources. Finally, the Commission needs to better control its meetings and should adopt a code of conduct and social media policies.

Recommendations

To address these issues, the Commission should implement the following recommendations:

11. Use a more systematic approach for addressing racial profiling in law enforcement in Oakland. This approach should include, but not be limited to, acknowledging racial profiling as a reality, engaging the communities affected, adopting policy guidance to address and end racial profiling, implementing data collection of race data to measure progress in reducing racial disparities in law enforcement and monitoring progress to assess whether new policies are having a positive effect on reducing racial profiling.
12. Obtain training on conducting and managing public meetings, including how to address public comments in general.
13. Ensure agenda items are consistent with the Commission's mission and enforce limits on public comments.
14. Develop a written code of conduct policy. This policy should address the desired behavior and values that the Commission should be promoting. The policy should also address enforcement of the policy, such as censure or removal from the Commission, if the Commissioners do not comply with the code of conduct.

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15. Develop a comprehensive social media policy that explains restrictions on how Commissioners can use social media.

To address situations when Commissioners contact City staff directly, the City Administration should:

16. Develop the following protocols:

- Guidance for reminding staff to not respond to Commissioners without authorization and for notifying department officials of when Commissioners contact staff directly
- Guidance for addressing situations when Commissioners contact staff directly
- Guidance for elevating the matter to the Commission, the City Council, or to the City Attorney

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Finding 3: The Agency has not fully implemented City Charter and Municipal Code requirements

Summary

The Oakland City Charter and the Municipal Code require the Community Police Review Agency (Agency) to implement 39 key requirements intended to improve the Agency's investigations and to support the efforts of the Commission. The Agency, however, has not fully implemented eight of these City Charter and Municipal Code requirements. It should be noted that the Agency operated without a permanent Executive Director from December 2017 to June 2019. However, during that time, the Agency operated with three Interim Executive Directors. The requirements of the new measure increased the workload on staff of the new Agency, both in investigations, as well as in administrative and support capacities, which may have contributed to these requirements not being implemented. Specifically, the Agency:

- Is not located in a space visible to the public as the Municipal Code requires;
- Did not meet the City Charter's staffing requirements;
- Has not completed investigations in accordance with timeframes outlined in the City Charter and State Law;
- Has not always videotaped interviews of officers who allegedly committed Class I offenses;
- Has not always received requested information from IAD and other OPD departments within 10 days;
- Has not always received notification of a complaint from IAD within 1 day;
- Needs to improve its processes for classifying and submitting administrative closures/dismissals to the Commission; and
- Has not provided sufficient training to Agency staff.

Thus, the Agency has not fully implemented all the City Charter requirements in the voter-approved measure and all the requirements that the City Council adopted in the enabling ordinance.

The Agency's office is not visible to the public, as the Municipal Code requires

The Municipal Code states that Agency staff should be located on the ground floor in an office that is visible and accessible by public transportation, to offer easy public access. The

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Commission, in consultation with the Agency Director, determines the number of Agency staff who would work at such a location. The Municipal Code further states that the Agency's hours of operation are to be clearly posted on the office door and inside the office. Additionally, the address of this office location, hours of operation, and telephone number must be posted on the City and Agency's websites.

The Agency's office is not on a ground floor of a building visible to the public. The office is located on the 6th floor of 250 Frank H. Ogawa Plaza and is difficult to locate.

The purpose of the office location is to ensure that the Agency is more accessible to the public and easier for the public to report complaints. It is evident from the limited number of complaints directly reported to the Agency that the public is not fully aware of its existence. In our review of investigation files, 24 out of 30 investigations were submitted to IAD first and then forwarded to the Agency for parallel review. Thus, only 6 of 30 cases reviewed were submitted directly to the Agency.

Although the Agency is out of compliance with this provision of the Municipal Code, it has no control over the physical location of the Agency. Assignment of City property for specific uses is part of the City's overall space allocation plan and moving the Agency to a ground floor location requires Council approval.

The Agency also lacks an effective outreach program to encourage community awareness of its role. Specifically, the Agency has not established goals and objectives for increasing the number of complaints and accommodations that it receives directly from the public. Additionally, the Agency has not established an outreach plan that identifies activities it needs to perform to increase public awareness, and it has not developed monitoring tools to assess its progress in meeting these goals.

In early 2018, the Agency continued work that was begun under the CPRB, which conducted some outreach activities. The introduction of the CPRA App – which allows the public to file complaints electronically via the internet – was seen as an important step towards providing more public access to the complaint process. With the additional investigative and administrative staffing demands created by Oakland City Charter Section 604, and the hiring freeze imposed by the Commission in early 2018, the Agency lacked the capacity to conduct additional outreach activities or to formulate an extensive outreach plan.

The Agency did not meet the City Charter's staffing requirements

The City Charter requires the Agency to be staffed with one investigator for every hundred sworn officers. As of July 2018, OPD had 738 officers; thus, the Agency should have had at least seven investigators during FY2018-19.

Audit Results

The Agency, however, was staffed by only four or five investigators from January 2018 through September 2019. Thus, the Agency operated with three fewer investigators than required by the City Charter for approximately 21 months. In October 2019, the Agency hired three additional investigators and currently fulfills the mandate of the Charter.

The Commission also placed a hiring freeze on investigators until February 2019, which has contributed to staffing problems at the Agency. According to the Commission, they imposed this freeze because they did not want to hire additional investigators until a permanent Executive Director was hired.

The Agency has not completed investigations in accordance with the timeframes recommended in the City Charter and, in some instances, California State Law

The City Charter requires the Agency to make every reasonable effort to complete its investigations within 180 days from when the complaint is filed with the Agency. Additionally, subject to certain exceptions, Government Code Section 3304(d) (3304) states that no punitive action or denial of promotion against a peace officer may be taken if the investigation of the misconduct is not completed within one year.

Between January 2018 and August 2019, the Agency only completed 3 of 81 investigations, or 4 percent of investigations, within 180 days. In addition, the Agency did not complete 1 of 81 investigations, or 1 percent, within one calendar year as required by 3304. However, this case was not completed within the statutory deadline due to the firing of the Agency's Interim Executive Director, who was responsible for closing cases.

The Agency lacks adequate management controls to properly monitor the timeliness of investigations. For example, the initial testing completed, identified five cases not completed within one year. Upon further review, Agency management confirmed four of the five were completed within one calendar year. However, the information in the Agency's management information system was incomplete or inaccurate.

Furthermore, as of August 2019, the Agency had one other investigation that had not been completed within the required one-year timeframe. Thus, if any allegations are sustained, the City cannot discipline the officers. However, the Agency followed up on this case and confirmed that although the investigation missed the one-year timeframe, the allegations were not sustained against the officers. Regardless, the Agency was at risk that if the allegations had been sustained, the officers would not have been able to be disciplined and controls should be put in place to address these types of circumstances.

Audit Results

Staff conducting interviews did not videotape all interviews of subject officers who are alleged to have committed a Class I offense

The Municipal Code requires the Agency to videotape interviews of all subject officers who are alleged to have committed a Class I offense. This is because Class I offenses are serious offenses, such as excessive use of force or in-custody deaths, therefore videotaping the interview provides better evidence. Standards and Guidelines for Internal Affairs – U.S. Department of Justice state that video recordings are especially helpful to both human resources and management in cases where the interviewee is being recorded pointing to positions on a map, objects in a room, or otherwise physically recreating an event that cannot be properly described with words alone.

Both IAD and Agency staff conducting interviews did not begin videotaping interviews of officers alleged to have committed Class I offenses until the summer of 2019. According to staff, they were unaware of the Municipal Code requirement. Furthermore, the Agency often relied on interview recordings conducted by IAD, rather than conducting independent interviews. Per Agency staff, this is because a State Court ruling known as the Santa Ana rule, requires evidence to be turned over to the accused subject officers, if they are interviewed a second time for the same offense. This step significantly impairs the utility of those interviews and makes them more complicated to initiate. This ruling further hampers the Agency's investigations; therefore, the Agency sometimes relies on IAD to conduct the initial interviews.

However, in recent months, the Agency and IAD have been working together and the Agency staff now attend IAD's interviews for which complainants have alleged misconduct.

The Agency has not always received requested information from OPD in 10 days as the City Charter requires

The City Charter requires OPD to make every reasonable effort to respond to the Agency's request for files and records within 10 days. These files and records include necessary documentation to conduct a full investigation. The Agency has one year from the date the complaint is received to perform its investigation; therefore, it needs timely information from IAD to complete its investigations within the mandated timeframes.

However, we confirmed OPD did not provide information to the Agency within 10 business days for 3 of 30 investigations, or 10 percent of the investigations reviewed. Furthermore, we could not confirm whether OPD provided the Agency with information within 10 days, for 23 of the remaining 27 investigations, as the Agency did not provide a sufficient audit trail.

It should be noted that in recent months, the Agency and IAD have been working together to assist the Agency in obtaining more direct access to information and Agency staff report that the level of cooperation and coordination between the Agency and IAD has also improved.

Audit Results

The Agency has not always received complaints from IAD within one business day of receipt as the Municipal Code requires

The Municipal Code requires either OPD or the Agency to provide each other a copy of complaints within one business day of receipt. Most complaints are received from IAD and then forwarded to the Agency to conduct a parallel investigation. In 20 out of 30 cases reviewed or 67 percent, the Agency did not receive the complaint within one business day of it being filed with IAD. In one case reviewed, OPD did not provide the complaint to the Agency until 27 business days after the complaint was received.

The Agency has one year from the date the complaint is received; thus, it needs timely referrals from IAD, so it can complete its investigations within the mandated timeframes.

As noted above, Agency staff reported that the communication between IAD and the Agency has improved recently and IAD is providing complaints to the Agency in a timelier manner.

The Agency needs to improve its process for defining, classifying, and submitting administrative closures/dismissals to the Commission

The Municipal Code requires the Commission to review the Agency's dismissal and/or administrative closures of all complaints involving Class I offenses. The Commission, with five affirmative votes, may direct the Agency to reopen and investigate a closed complaint.

According to Agency staff, the previous Interim Executive Director did not submit administrative closures to the Commission. The Agency staff have also mentioned that the criteria on what constitutes an administrative closure is not clear. Thus, once clear criteria are defined, the Agency must submit cases not previously identified as administrative closures to the Commission.

It should be noted that the term administrative closure has no formal legal definition, nor is it defined in the City Charter. In addition, Agency staff explained the meaning of administrative closures has changed over time since the Measure was enacted and CPRB disbanded. At one time, it represented investigations that were closed administratively without ever having been presented to the board for a hearing – akin to what is now sometimes described as a summary closure. Later, administrative closure came to mean investigations that were closed based on board deliberation of investigator recommendations and reports of investigation, as opposed to the few cases in which fact-finding hearings were still convened. Further legal clarification is needed to define administrative closures in order for the Agency to be able to comply with the requirements of the Municipal Code.

Audit Results

The Agency has not provided sufficient training to staff as required by the Municipal Code

Oakland Municipal Code Section 2.46.030.C requires that all investigators receive necessary training in conducting fair and impartial investigations. NACOLE and the Quality Standards for Investigations by the Council of Inspectors General also stress the importance of training for investigators. NACOLE emphasizes the importance of providing a formal and regular training and development program to all agency staff. They further mention that being a successful practitioner of citizen oversight of law enforcement requires meeting certain qualification standards and receiving ongoing training and professional development.

However, the Agency lacks a formal training program for both intake technicians and investigators. Agency staff also reported that they had not received adequate training on topics such as investigative writing and interviewing techniques.

Providing necessary training is a critical step in the development of a strong investigative team, as the accuracy of investigations can have a significant impact on the involved officers, OPD, and the relationship with the public. As such, the Agency should develop an annual training plan that is based on performance and is sufficient for staff to undertake their respective responsibilities.

Conclusion

The City Charter and the Municipal Code outline various requirements for the Agency, however, many of these requirements have not been fully implemented. These include the location of the Agency's office, the timeliness of investigations, staffing, timely receipt of files and records from OPD, reporting of administrative closures, videotaping of Class I offenses, training for Agency staff, and creating an effective outreach program. Thus, the Agency has not fully implemented all the City Charter requirements in the voter-approved measure and all the requirements that the City Council adopted in the enabling ordinance.

Recommendations

To ensure compliance with the Municipal Code requirement regarding the Agency's office location, the City Administration and the Agency should:

17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.

To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should:

18. Work with Human Resources to ensure that hiring lists are kept up-to-date to have sufficient candidates available for hiring when vacancies occur.

Audit Results

19. Establish written goals and objectives regarding the timeliness of their investigations. It should define the various aspects of the investigative process that need to be tracked. Further, it should develop management reporting systems to allow management to monitor the timeliness of investigations.
20. Develop written policies and procedures to ensure investigations are concluded in a timely manner.
21. Develop written policies and procedures to ensure all interviews with officers who allegedly committed Class I offenses are videotaped.
22. Develop written policies and procedures to ensure that investigators document the date that information is requested and received from OPD to track compliance with the 10-day requirement. Moreover, the Agency should work with OPD to receive information via direct access.
23. Develop written policies and procedures to ensure complaints are received timely from IAD, within 1 day of IAD's receipt.
24. Establish criteria for defining administrative closures and immediately begin reporting all administrative closures to the Commission on a regular basis.
25. Develop and implement a formal training program for all Agency staff.
26. Develop an outreach plan that includes written goals and objectives, outreach activities, and monitoring reports to assess its progress in reaching its outreach goals.

Audit Results

Finding 4: The Agency's investigative processes are not formalized, and the Agency and the Commission have not adequately defined the type of oversight role it should provide

Summary

Quality Standards for Investigations by the Council of Inspectors General (Standards) require investigations to be conducted in a thorough, diligent, and complete manner. Investigations must be conducted in accordance with applicable laws, rules, regulations, and guidelines. Methods and techniques used in investigations must be appropriate for the individual circumstances and objectives of each case. Findings must be supported by adequate, accurate, and complete documentation in the case file. Investigations must be executed in a timely, efficient, thorough, and legal manner.

The Agency lacks a formal process for conducting investigations. Thus, the Agency's investigative processes are not clearly defined and documented. Consequently, staff are not adequately trained, investigations are not conducted timely, and in accordance with best practices.

Specifically, we noted the Agency has not:

- Formalized its complaint intake process;
- Documented its considerations for assigning staff to conduct investigations;
- Established formal planning processes for investigations;
- Documented requirements for investigations;
- Established a quality control system to ensure that its policies and procedures are followed; and
- Implemented a strong management information system to monitor the status of investigations and provide statistical data on its performance.

The Agency was understaffed for almost two years. The Agency lacked a permanent Executive Director and at least two investigators during this time, making it difficult to define and document these processes.

Different types of police oversight investigative agencies exist. The Agency has modeled itself after the Community Police Review Board, which was primarily a review agency. The Agency needs to work with the Commission to define its role for the future.

Audit Results

Background

The Agency is required to investigate all public complaints, which include use of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies such as resident protests or marches. Additionally, the Agency must investigate policies and procedures on federal court orders such as the Negotiated Settlement Agreement if directed by the Commission.

The Agency must also investigate any other possible misconduct or failure to act of an OPD sworn employee, whether it is or is not the subject of a public complaint, as directed by the Commission.

Public complaints against sworn employees are received by IAD, or by the Agency, via email, walk-in, mail, telephone or web application. Most complaints are received by IAD and are forwarded to the Agency via email.

IAD and the Agency conduct parallel investigations and compare results once their respective investigations are complete. The City Charter requires the Agency to make every reasonable effort to complete investigations within 180 days from the filing of the complaint with the Agency. The Agency is required to submit the results of investigations to the Commission and the Chief of Police, within 30 days of the completion of an investigation.

If the Chief of Police agrees with the Agency's findings and proposed discipline, the subject officer is notified of the findings and intent to impose discipline, if applicable. If the Chief of Police and Agency disagree on findings, then they both must submit their findings and proposed discipline to the Commission's Disciplinary Committee, which is comprised of three Commissioners. The Discipline Committee convenes to review findings and propose discipline, based solely on the findings presented by the Agency and the Chief of Police. Officers have the right to appeal any final decision regarding discipline or termination to binding arbitration.

Agency investigations and staffing

The Agency is comprised of 13 full-time staff, including an Executive Director, hired in July 2019, three intake technicians, one supervisor, one policy analyst and six investigators, three of whom were hired in October 2019. The Agency also has an Office Assistant II position.

Agency staff has investigated and completed an estimated¹² 50 cases per year during the audit period under review. See Exhibit 3 below for the number of cases reviewed and completed by the Agency during Calendar Years 2018 and 2019 and Exhibit 4 shows the number of cases closed by

¹² The number of completed investigations in 2019 does not cover the full calendar year. The investigations completed between September and December 2019 were not counted, therefore auditors estimated an annual average of approximately 50 completed investigations per year.

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intake.

Exhibit 3 – Number of Completed Investigations by Calendar Year

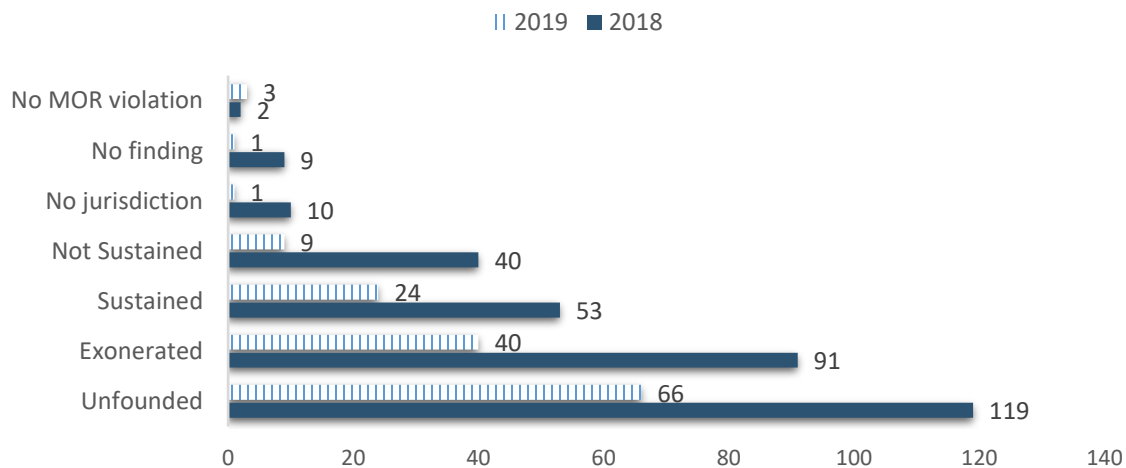
Calendar Year	Number of Completed Investigations
2018 (January through December)	51
2019 (January through August)	30

Exhibit 4 – Number of Cases Closed by Intake

Calendar Year	Number of Cases Closed by Intake
2018	Approximately 310
2019 (January through August)	Approximately 70

Exhibit 5 breaks down the closed complaints by type of finding. See Appendix F for the definition of each type of closure.

Exhibit 5 - Results of Closed Complaints



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Each complaint may contain multiple allegations of misconduct. Exhibit 6 breaks down the number of allegations contained in each complaint for the two years under review.

Exhibit 6 - Closed Complaints by Allegation Type for Calendar Years 2018 & 2019 (January through August)		
Allegation Category – See Appendix F	2018	2019
Performance of duty	168	64
Use of force	60	41
Conduct towards others	44	19
Refusal/failure to provide name or refer complainant	11	2
Duties & responsibilities	10	1
Truthfulness	7	1
Obedience to laws – DUI/intoxication	4	12
Gifts/gratuities – soliciting/accepting	2	1
Complainant uncooperative	1	0
Custody of prisoner	11	0
Reports/Records	6	0
No MOR (Manual of Rules) ¹³	0	3
Obstruction to Internal Affairs process	0	1
Department property and equipment	0	1
Total Allegations	324	146
Total Number of Investigations or cases (multiple allegations may be reported in one completed complaint investigation)	51	30

¹³ Manual of Rules defines standards, a code of conduct, and ethics for the Oakland Police Department.

Audit Results

The Agency does not have a defined and formalized complaint intake system

After an agency receives a complaint, it gathers information from the complainant. This process is referred to as “intake.” An effective intake system assists in improving the efficiency and effectiveness of investigations. The primary goal of intake is to collect detailed, accurate information to facilitate assignment and prioritization of investigations and/or referral. Intake is the first line of review and can screen out investigations that are out of jurisdiction or otherwise do not require further investigation. Because intake is crucial to complaint-based investigations, it should be sustainably and effectively staffed.

The Agency’s intake process is not documented in its department policies and procedures. In addition, the role of the intake technician has been inconsistent. According to Agency staff, the previous Executive Director screened the complaints. Currently, the Agency’s intake technicians perform this task. Agency staff reported the intake process sometimes varies by intake staff. In addition, intake staff have not been adequately supervised and have not received sufficient training on conducting initial interviews.

The Agency does not have documented procedures for assigning staff to investigations

Standards require that individuals assigned to conduct investigative activities must collectively possess professional proficiency for the tasks required. These Standards also require investigators to be independent and free from personal impairments.

The Agency lacks a formal process for assigning staff to an investigation. Specifically, we found no evidence that the complexity of the investigation is considered when assigning an investigator or that the investigator is independent and free of any personal impairments related to the investigation prior to being assigned to a project. Thus, the Agency lacks adequate controls to ensure that investigators are qualified to perform the investigation and are independent and free of any personal impairments.

One of the Agency investigative staff does not have a background that is consistent with other investigators or with the requirements of the job. The job description requires three years of professional full-time paid experience in civil and criminal investigation or a related field. When hired, the investigator did not have this background.

The Agency lacks a formal planning process for its investigations

The Standards include guidelines for developing investigation plans with clear objectives to ensure that steps in an investigation are performed efficiently and effectively. NACOLE lists a set of core competencies for civilian oversight practitioners that includes adequate planning of investigations.

Audit Results

The Agency lacks a formal planning process for investigations. Written investigation plans with established objectives were not found in any of the case files we tested. Additionally, the case files lacked evidence of supervisory approval initiating the investigations. Without an approved investigation plan, the Agency lacks sufficient controls to ensure efficient and effective investigations.

The Agency lacks documentation requirements for its investigations

Standards and guidelines for Internal Affairs by the U.S. Department of Justice's Office of Community Oriented Policing Services, suggest having basic forms, such as an intake complaint form, and consistent formats for investigative narratives and documentation to ensure crucial information is included and adequate. Templates also show how investigators reached their final decision and may be used as legal defense. Standards and guidelines for Internal Affairs also strongly recommend the use of a chronological log that includes entries with dates, times, contact information of each person the investigator called, and any event that would evidence investigative due diligence. Logs allow supervisors to determine the effectiveness of their investigators and help other investigators take over the case if the original investigator is removed from the case.

The Agency lacks sufficient and consistent documentation in its investigative files. The Agency has not adopted standardized templates for use by their investigators during any of the phases of an investigation.

Furthermore, at the end of an investigation, investigators prepare a Final Report of Investigation (ROI), which states the final deposition for each allegation. The ROIs varied in content and format depending on the investigator. Uniform reports help ensure that reporting is consistent, and that critical information is not omitted.

Additionally, when reviewing each investigator's case file, the documentation and organization of each case file varied greatly by investigator. One investigator used the current management information system to keep a detailed audit trail of events pertaining to the case file, whereas another investigator maintained a chronological log via handwritten notes. In some case files, it was evident when certain information was requested and received from another department. In other case files, investigators did not include this information. Thus, the Agency's case files lacked sufficient information to determine whether turnaround standards with OPD and other departments were met.

The Agency lacks a formal quality review process for its investigations

The Standards recommend conducting and documenting supervisory reviews of case activities periodically to ensure that cases are progressing efficiently and effectively.

Audit Results

The Agency's investigation files, including the final reports of investigation do not include formal written approval from the Executive Director. The files also lack approvals or sign-offs indicating review by a Supervisor. Thus, the Agency cannot provide adequate assurance to ensure investigations are conducted efficiently, effectively, and in accordance with prescribed standards.

The Agency lacks an adequate management information system

The Standards recommend the investigation organization's management information system collect the data needed to assist management in performing its responsibilities, measuring its accomplishments, and responding to customers.

The Agency's management information system is inadequate. This system went live in 2018 with Version 1, with the expectation the Agency would revamp it the next year to meet additional demands; however, due to a lack of administrative support, the update did not occur, the platform used became outdated, and the system was never used as intended. Staff currently must enter information manually to obtain needed statistical data. The system also lacks complete and accurate information because investigators do not enter information consistently. Consequently, the Agency lacks adequate information to assess whether investigations are conducted timely, effectively, and in accordance with the City Charter, Municipal Code, State requirements, and prescribed standards.

The Commission and the Agency have not defined the type of oversight the Agency should provide

NACOLE reported that over the last several decades, issues of trust and accountability have moved to the forefront of community-police relations, and a great deal of resources have been devoted to enhancing police performance, including strengthening police accountability and oversight functions.

One such mechanism for increasing accountability is civilian oversight of law enforcement. This accountability tool uses non-sworn staff to review police conduct. In some jurisdictions, this is accomplished by allowing oversight practitioners to review, audit, or monitor complaint investigations conducted by police internal affair units. In other jurisdictions, this is done by allowing civilians to conduct independent investigations of allegations of misconduct against sworn officers. Some oversight mechanisms involve a combination of system analysis and complaint handling or review.

NACOLE recommends considering the type of oversight model that works best for each specific community, as there are advantages and weaknesses to each. Generally, an agency falls into one of three categories:

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1. Conducts investigations – more independent, reduces bias, but most expensive model and requires specialized training.
2. Reviews or hears appeals of internal police investigations – focus on reviewing the quality of work done by IAD, may increase public trust in the process, least expensive model, but also less authority, less experience and less independence.
3. Audits or monitors police policy, training, and investigations, or conducts systemic investigations – robust public reporting, less expensive than full investigative model, but focus is on examining broad patterns instead of individual cases, significant expertise is required, and most auditors/monitors can only make recommendations instead of compelling law enforcement agencies to make systemic changes.

The Agency's current oversight model has not been defined since the Commission was established in 2017. The Agency still uses the investigative processes used by the Community Police Review Board, which results in an agency model that is a hybrid between a review agency and an investigative agency. From the case files reviewed, we noted that in some cases the Agency investigators conducted all aspects of an investigation, including their own interviews of police officers. In more than 20 percent of the cases reviewed, however, the investigators relied on interview notes and recordings by IAD. Performing independent investigations increases the level of objectivity and independence of the investigative process.

As noted earlier in the report, the Agency has been working with IAD in recent months to conduct live interviews together with their investigators. This will increase the Agency's involvement in cases and their ability to provide independent findings and recommendations.

Conclusion

The Agency lacks formal management systems to ensure efficient, effective, compliant, and consistent investigations. The Agency needs to implement the recommendations below to address the identified deficiencies in its investigative processes.

Recommendations

To ensure efficient, effective, compliant, and consistent investigations, the Agency should:

27. Define and document the overall processes necessary to undertake investigations, including establishing policies and procedures for the intake process.
28. Establish and document a formal process for assigning staff to an investigation that considers the complexity of the investigation, staff experience and background, and whether the investigator is independent and free from personal impairments.

Audit Results

29. Ensure all job qualifications are met before hiring an investigator, as the role of an investigator requires extensive experience and the ability to interpret applicable laws and regulations.
30. Establish procedures for the planning of investigations, including creating a standard investigation plan with clear objectives and methodology for the investigation. This plan should be reviewed and approved by the supervisor before the formal investigation commences.
31. Standardize reports to ensure consistency in how investigations are conducted and reported. In addition, the Executive Director should formally sign off on the final report of the investigation.
32. Establish policies and procedures that outline which phases of an investigation require quality review and how this will be documented.
33. Acquire a case management system to assist management in performing its responsibilities of case management and reporting, measuring its accomplishments, and responding to inquiries.
34. Work with the Commission to establish the preferred investigative agency oversight model.

Audit Results

Finding 5: The City Council Should Consider Amending Several of the Commission's City Charter and Municipal Code Requirements

Summary

The City Council is considering amending Sections 6.04 of the City Charter through a ballot measure that will go before the voters in November 2020. During our audit, we identified several issues with the City Charter and the Municipal Code that the City Council should consider addressing in the new ballot measure. For instance, the City Council should re-assess the City's process for removing the Chief of Police. In addition, the City Council is considering changes to the process for appointing Commissioners. Our audit found that the Mayor appoints members to the police oversight bodies in most jurisdictions we surveyed, and selection panels are not frequently used. Furthermore, the City Council should consider amending the City Charter, so it can review and approve Commission nominees individually, not as a slate. The City Council should also consider strengthening the language in regard to potential conflicts of interest of selection panel members. Additionally, the City Council should also more clearly define the role and authority of the Commission and prohibit the Commission from getting involved in administrative activities and directing staff. Finally, the City Council should consider removing non-essential requirements from the City Charter and the Municipal Code, as the Commission has more requirements than a part-time oversight body can handle.

The City Council is considering amending the City Charter

The City Council is considering amending Sections 604 of the City Charter through a ballot measure that will go before the voters in November 2020. During our audit of the Commission and the Agency, we identified several issues with the City Charter and the Municipal Code that the City Council should consider addressing in the new ballot measure.

The following are some key areas for the City Council to consider for modifying the City Charter and the Municipal Code.

The City Council should re-assess the City's process for removing the Chief of Police

The Municipal Code requires the Commission to evaluate the Chief of Police and authorizes the Commission to remove the Chief of Police for cause. In addition, the City Charter authorizes the Commission, acting jointly with the Mayor, to remove the Chief of Police without cause.

This authority is rare amongst other police oversight agencies. We found that police oversight agencies in the City and County of San Francisco, the City of Los Angeles, and the City and County of Honolulu have the authority to remove the Chief of Police. Unlike Oakland, the Chiefs of Police in these jurisdictions report directly to the police oversight body and do not report directly to

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anyone else in the organization.

The Chief of Police of Oakland, on the other hand, has a multi-reporting relationship. The Chief of the Police reports to the Mayor, the City Administrator, the Commission, and the federal monitor and they all have the authority to remove the Chief of Police. We did not identify any other jurisdictions that have such a multi-reporting relationship, in which multiple parties also have the authority to remove the Chief of Police.

The removal of a Chief of Police can be very disruptive to a law enforcement agency, the City they serve, and to the public, especially in the short-term. The departure of key leadership often means the loss of valuable talent and institutional memory and can be costly to organizational momentum and mission. Moreover, such a change affects multiple stakeholders such as the City Council and the public. Therefore, it is essential that the removal of the Chief of Police be done with the utmost care and consideration, so that the process does not pose significant liability issues for the City.

In February 2020, the Commission, acting jointly with the Mayor, fired the Chief of Police without cause. As noted above, the City Charter authorizes the Commission, acting jointly with the Mayor, to remove the Chief of Police without cause.

Since the City Council is considering modifying the City Charter and the Municipal Code, this provides an opportunity for the City Council to re-evaluate the provisions regarding the removal of the Chief of Police.

We recommend that the City Council consider the following questions at a minimum:

1. Who should be vested with the authority to fire the Chief of Police for cause?
2. Who should be vested with the authority to fire the Chief of Police without cause?
3. What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police do not pose significant liability issues for the City?

Oakland is one of the few jurisdictions to use selection panels to choose Commission members and several selection panel members have had potential conflicts of interest

Under the current City Charter, the Mayor nominates three Commissioners and an Alternate and a selection panel nominates four Commissioners and an Alternate, subject to City Council approval. The City Council, however, is considering eliminating the Mayor's selections to the Commission and giving the City Council responsibility for appointing all Commissioners, based on the recommendations of the selection panel.

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The Mayor, in most of the jurisdictions surveyed, appoints members to the police oversight bodies. In these jurisdictions, the Mayor or the Mayor and the City Council or the Board of Supervisors are responsible for appointing members to most of the police oversight bodies we surveyed. Specifically, the Mayor appoints the members of the police oversight bodies in 16 jurisdictions surveyed. The Mayor was also involved with the selection process in 10 other jurisdictions. In these jurisdictions, the Mayor and the City Council, the Mayor and the Board of Supervisors, the Mayor and the Governor, or the Mayor and the electorate selected the members of the oversight bodies. Dallas was the only city in which the City Council was the only appointing authority. The City Manager selected the oversight body in two other cities.

The use of selection panels in other jurisdictions was rare in the 32 jurisdictions surveyed. Only five other jurisdictions, Portland, Miami, Orlando, Las Vegas, and Atlanta, use some version of a selection panel.

As it considers eliminating the Mayor's appointees to the Commission, the City Council should debate the pros and cons of the various appointment methods used to select Commissioners.

Additionally, the City Council confirms the selection panel nominees for the Commission. When more than one opening exists, the City Charter requires the City Council to approve or reject the slate of candidates nominated by the selection panel. We recommend the City Council consider amending the City Charter to allow the City Council to confirm selection panel nominees individually, not as a slate, to ensure each nominees' qualifications are adequately considered.

The City Council should also consider strengthening the language in regard to conflicts of interest of selection panel members. The City Charter prohibits current OPD employees from sitting on the selection panel. The Municipal Code prohibits any attorney who represents a person or entity with a pending claim or lawsuit against OPD, or an attorney who represented a person or entity that filed a claim or lawsuit against OPD and that claim was resolved during the previous year.

We identified potential conflicts of interest with some of the members of the selection panel that should be addressed in either the City Charter or the Municipal Code. We identified three out of the nine selection panel members may not be sufficiently independent. Specifically:

- One member worked for a firm that investigated several cases against OPD and is an attorney representing the plaintiffs in the NSA. In September 2019, this member filed an affidavit in federal court describing the lawsuit filed by the officers in the "Pawlik case" as a "collateral attack" on the federal reform efforts and an "affront" to the federal judiciary. Although the Municipal Code specifies that this individual should be prohibited from serving on the selection panel, the individual and all original members of the selection panel were grandfathered in and allowed to remain on the selection panel. This was due to the Municipal Code requirements being passed over a year after Measure LL was

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passed. Therefore, an exception was granted to all original selection panel members. This individual, per the Municipal Code, clearly has a conflict of interest and should be removed from the selection panel. Moreover, the Municipal Code should be amended to eliminate the provision that exempted this individual to serve on the selection panel in the first place.

- One member worked for OPD in the past but is not a current employee. A former OPD employee may be conflicted as much as a current employee. Although this individual is no longer on the selection panel, the Code should be amended to prohibit both current and former OPD employees from serving on the selection panel.
- One member's spouse is a sworn officer in OPD. The City Charter prohibits current employees from serving on the selection panel. A spouse of a current or former employee may have pre-conceived notions about OPD that may also pose a potential conflict of interest. Thus, the City Charter should be modified to prohibit current and former OPD employees and their immediate family from serving on the selection panel.

The City Charter does not specifically prohibit the Commission from engaging in administrative activities and does not adequately define the Commission's authority

Finding 2 in this report points out that the Commission has involved itself in administrative matters and has directed City staff. The City Charter prohibits the City Council from involving itself in administrative matters and from directing City staff. These City Charter provisions, however, do not apply to the Commission and other oversight bodies.

The City Council should consider including language in the ballot measure that would mirror Sections 207 and 218 of the City Charter and prohibit the Commission from involving itself in administrative activities and from directing City staff. Honolulu's Charter specifically prohibits the Police Commission or any of its members from interfering in administrative matters of the Police Department.

Finding 2 also noted that the Commission has involved itself in matters outside their authority to oversee the OPD. Thus, the City Council should work with the City Attorney, City Administration, and the Commission to better define their respective roles in matters relating to OPD and should also consider proposing amendments to the City Charter that clarify the Commission's authority and responsibilities.

Audit Results

The Commission has more requirements than a part-time oversight body can effectively address

As addressed in Finding 1, the Commission has not complied with numerous requirements in the City Charter and the Municipal Code. Many of these requirements are too onerous for a part-time oversight body to effectively address. For instance, the City Charter states that the Commission must review the Mayor's proposed budget to determine whether budgetary allocations for the OPD are aligned with OPD's policies, procedures, customs and General Orders. As noted in Finding 1, the Commission has not reviewed the Mayor's proposed budget to determine whether the budget is aligned with OPD's policies, procedures, customs, and General Orders.

The City Council is responsible for reviewing and approving the City's budget and it is unclear how the Commission's review of OPD's budget would add additional value to the budget process.

Conclusion

The City Council is considering amending the City Charter and the Municipal Code. During our audit, we identified several issues the City Council should consider in developing new City Charter and Municipal Code language. These issues include the process for removing the Chief of Police, the use of selection panels to nominate Commissioners, better defining the Commission's authority, and whether the Commission has more City Charter and Municipal Code requirements than a part-time oversight body can effectively fulfill.

Recommendations

As it considers changes to the City Charter and the Municipal Code, the City Council should:

35. Consider the following questions in regard to the Commission's authority to fire the Chief of Police:

- Who should be vested with the authority to fire the Chief of Police for cause?
- Who should be vested with the authority to fire the Chief of Police without cause?
- What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police do not pose significant liability issues for the City?

36. Debate the pros and cons of the various methods used to select Commissioners.

37. Consider revising the City Charter to allow the City Council to review and approve Commissioners individually, instead of a slate of candidates.

38. Consider amending the requirements for selection panel members to eliminate potential conflicts of interest and the Municipal Code should be amended to eliminate the provision that exempted members who were previously grandfathered onto the selection panel.

Audit Results

- 39. Develop language in the proposed ballot measure to prohibit the Commission from participating in administrative activities and directing staff.
- 40. Develop clarifying language, if needed, in the proposed ballot measure to clearly identify the Commission's authority and responsibilities.
- 41. Reassess the Commission's requirements from the City Charter and the Municipal Code to determine whether a Commission comprised of part-time volunteers can effectively address those requirements, or whether the City Council should eliminate requirements in the proposed City Charter amendment or in the Municipal Code.

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Appendix A – The passage of Measure LL

A **civilian police commission measure** was on the ballot for Oakland voters in Alameda County, California, on November 8, 2016. Measure LL¹⁴ was approved.

- A **yes** vote was a vote in favor of creating a Police Commission run by civilian commissioners to oversee the Oakland Police Department as well as a Community Police Review Agency to investigate complaints of police misconduct.
- A **no** vote was a vote against creating a Police Commission run by civilian commissioners to oversee the Oakland Police Department as well as a Community Police Review Agency to investigate complaints of police misconduct.

Ballot question

The following question appeared on the ballot:

Shall Oakland's City Charter be amended to establish: (1) a Police Commission of civilian commissioners to oversee the Police Department by reviewing and proposing changes to Department policies and procedures, requiring the Mayor to appoint any new Chief of Police from a list of candidates provided by the Commission, and having the authority to terminate the Chief of Police for cause; and (2) a Community Police Review Agency to investigate complaints of police misconduct and recommend discipline?

City Attorney's impartial analysis

The following impartial analysis of the measure was prepared by the office of the Oakland City Attorney:

Currently, the City Administrator supervises the Oakland Police Department ("OPD"). The Chief of Police ("Chief") is responsible for the OPD's day-to-day operations. The Chief investigates possible police misconduct, but the City Administrator must approve all suspensions of five or more days, fines, demotions or discharges. The City's Citizens' Police Review Board ("CPRB") investigates citizen complaints of police misconduct.

This measure would establish a Police Commission ("Commission") to oversee the Police Department's policies and procedures, and a Community Police Review Agency ("Agency") to investigate complaints of police misconduct and recommend discipline.

¹⁴ [https://ballotpedia.org/Oakland, California, Civilian Police Commission, Measure LL \(November 2016\)](https://ballotpedia.org/Oakland,_California,_Civilian_Police_Commission,_Measure_LL_(November_2016))

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The Commission would review the OPD's policies, procedures and General Orders. The Commission may also propose changes, and approve or reject the OPD's proposed changes, to those policies, procedures and General Orders that govern use of force, profiling, and general assemblies. The Commission's proposed changes, and any rejections of the OPD's proposed changes, would be subject to the City Council's review and approval. The Commission would also conduct at least one public hearing a year on OPD policies, procedures and General Orders. The Commission would consist of seven regular and two alternate members. The Mayor would nominate three regular Commissioners and one alternate, subject to the City Council's approval. At least one of the three appointees must be a retired judge or lawyer with trial experience in criminal law or police misconduct.

A nine-member Selection Panel would nominate four regular Commissioners and one alternate. Each member of the City Council and the Mayor would appoint one member to the Selection Panel. The Selection Panel's nominees would become members of the Commission, unless the City Council rejects all the panel's nominees.

Community Police Review Agency Currently, after investigating a complaint of police misconduct, the CPRB may recommend proposed discipline. The CPRB must submit any recommendations regarding discipline to the City Administrator, who must respond to the CPRB in writing and make the final decision. Under the proposed measure, the Commission would establish the Agency, which would receive and review all complaints of police misconduct. The Agency would be required to investigate all complaints involving use of force, in-custody deaths, profiling and public assemblies. The Commission could also direct the Agency to investigate other possible police misconduct. After completing its investigation of a complaint, the Agency would submit its findings and proposed discipline to the Commission and the Chief.

If the Chief agrees with the Agency's findings and proposed discipline, the Chief would notify the officer who is the subject of the complaint. If the Chief disagrees with the Agency's findings and proposed discipline, the Chief would be required to prepare separate findings and proposed discipline. A three-member committee of the Commission would consider the Agency's and the Chief's recommendations and make a final decision, subject to the officer's ability to file a grievance.

Budget and Staffing the City must allocate enough money to the Commission and the Agency so that they can perform their required functions and duties.

After the City Council confirms the first group of Commissioners, the CPRB's pending business would be transferred to the Commission and the Agency. The CPRB's Executive

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Director would become the Agency's Interim Director, and all other CPRB staff would become Agency staff.

—*Oakland City Attorney*

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Appendix B – City Charter Section 604(b) Powers and Duties of the Commission

The following are the Commission’s powers and duties listed in City Charter Section 604¹⁵(b):

1. Organize, reorganize and oversee the Agency.
2. Conduct public hearings at least once a year on Department policies, rules, practices, customs, and General Orders. The Commission shall determine which Department policies, rules, practices, customs, or General Orders shall be the subject of the hearing.
3. Consistent with state law and in accordance with Section 1207 of the City Charter, entitled “Oaths and Subpoenas,” issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before it. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, the majority of the members of the Commission may find him in contempt and shall have power to take proceedings in that behalf provided by the general law of the State.
4. Propose changes, 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 for so long as such federal court orders and settlements remain in effect. All such proposed changes and modifications shall be submitted to the City Council for approval or rejection. If the City Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, the changes or modifications will become final.
5. Approve or reject the Department’s proposed changes to all policies, procedures, customs, and General Orders of the Department which govern 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 for so long as such federal court orders and settlement remain in effect. If the Commission does not approve or reject the Department’s proposed changes within one hundred and twenty (120) days of

¹⁵ Full text of City Charter Section 604: [City Charter Section 604](#)

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the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted to the City Council for review. If the City Council does not approve or reject the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, the Commission's decision will become final.

6. Review and comment, at its discretion, on all other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police who shall provide a written response to the Commission upon request.
7. Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, customs, and General Orders. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.
8. Require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require.
9. Report at least once a year to the Mayor, the City Council, and to the public to the extent permissible by law, the information contained in the Chief's report in addition to such other matters as are relevant to the functions and duties of the Commission.
10. Acting separately or jointly with the Mayor, remove the Chief of Police by a vote of not less than five affirmative votes. If acting separately, the Commission may remove the Chief of Police only after adopting a finding or findings of cause, which shall be defined by City ordinance. The Commission must make its finding of just cause by no less than five affirmative votes. Upon removal, by the Commission, by the Mayor, or by the Mayor and the Commission acting jointly, or upon the notice of vacancy of the position of Chief of Police, the Mayor, in consultation with the Chair of the Commission, shall immediately appoint an Interim Chief of Police. Such appointment shall not exceed six (6) months in duration unless approved by a majority vote of the Commission. The Commission, with the assistance of the City Administrator, shall prepare and distribute a job announcement, and prepare a list of at least four candidates and transmit the names and relevant background materials to the Mayor. The Mayor shall appoint one person from this list or reject the list in its entirety and request a new list from the Commission. This provision shall not apply to any recruitment for the position of Chief of Police that is pending at the time of the Commission's first meeting.

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11. Send the Chairperson of the Commission or another Commissioner appointed by the Chairperson to serve as a non-voting member of any level one Oakland Police Force Review Board.
12. Perform such other functions and duties as may be prescribed by this Charter or by City ordinance.

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Appendix C – Municipal Code Section 2.45.070 - Functions and Duties of the Commission

The following are the functions and duties of the Commission listed in Section 2.45.070¹⁶ of the Municipal Code:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law, including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, et seq.). A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).
- C. Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter.
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection C., above.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:
 - 1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the

¹⁶ Full text of Municipal Code Chapter 2.45 - Oakland Police Commission: [Municipal Code Chapter 2.45](#)

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- duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction; or
2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
 3. Conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
 4. Failure or refusal to cooperate with any investigation involving employees of the Department; or
 5. Obstruction of any investigation of Department employee misconduct or criminal activity; or
 6. Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
 7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
 8. A material breach of confidentiality; or
 9. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.
- F. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in the Chief's annual report to the Commission which shall include, at a minimum, the following:
1. The number of complaints submitted to the Department's Internal Affairs Division (hereinafter, "IAD") together with a brief description of the nature of the complaints;
 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;

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3. The number of investigations completed by IAD, and the results of the investigations;
4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
5. Revisions made to Department policies;
6. The number and location of Department sworn employee-involved shootings;
7. The number of Executive Force Review Board or Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;
9. Number of Department sworn employees disciplined and the level of discipline imposed; and
10. The number of closed investigations which did not result in discipline of the subject officer.

The Chief's annual report shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- G. Conduct an annual performance review of the Agency Director and of the Chief. The Commission shall determine the criteria for evaluating the Agency Director's and the Chief's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director and the Chief one (1) full year before conducting any evaluation of their job performance. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Agency Director's or the Chief's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially.
- I. Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of:

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1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
2. Arbitration decisions or other related results;
3. The ways in which it has supported the police discipline process; and
4. Significant recent developments in police discipline.

The City Attorney's semi-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

J. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.

K. Make available on its website, to the extent permitted by law:

1. The Commission's annual report;
2. The Chief's annual report;
3. The Agency's reports;
4. The Agency Director's monthly reports; and
5. The Inspector General's annual report.

No information shall be distributed using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

L. Direct the Agency to investigate a serious incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.

M. Review the Agency's dismissal and/or administrative closure of all complaints of misconduct involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.

N. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of

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misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed by-laws prior to implementation.

- O. Receive all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.
- P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.
- Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency and the Commission.
- R. The Department, through the City Administrator or his or her designee, shall report to the Commission on issues identified by the Commission through the Commission's Chair. The City Administrator, or his or her designee, shall attend in person unless impracticable, and shall be prepared to discuss and answer questions regarding the issues identified by the Commission.

(Ord. No. 13498, § 2, 7-10-2018)

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Appendix D – Municipal Code Section 2.46.030 - Functions and Duties of the Agency

In addition to the powers and duties prescribed in Section 604 of the Oakland City Charter, Section 2.46.030¹⁷ of the Municipal Code also lists the Agency's functions and duties. They are the following:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. A copy of the numbered and date-stamped complaint shall be provided to the complainant and to the Department's Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency's website and by accepting the online filing of complaints and attachments via the Agency's website, and by making information about the complaint process available at other public locations to be determined by the Agency Director.
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a subject officer and any other sworn employee of the Department to fully cooperate with an Agency investigation. The Chief shall order all Department sworn employees subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
- E. Videotape the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
- F. Request, without requiring, that the complainant(s) and witnesses of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
- G. In consultation with and upon the approval of the Commission, establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.

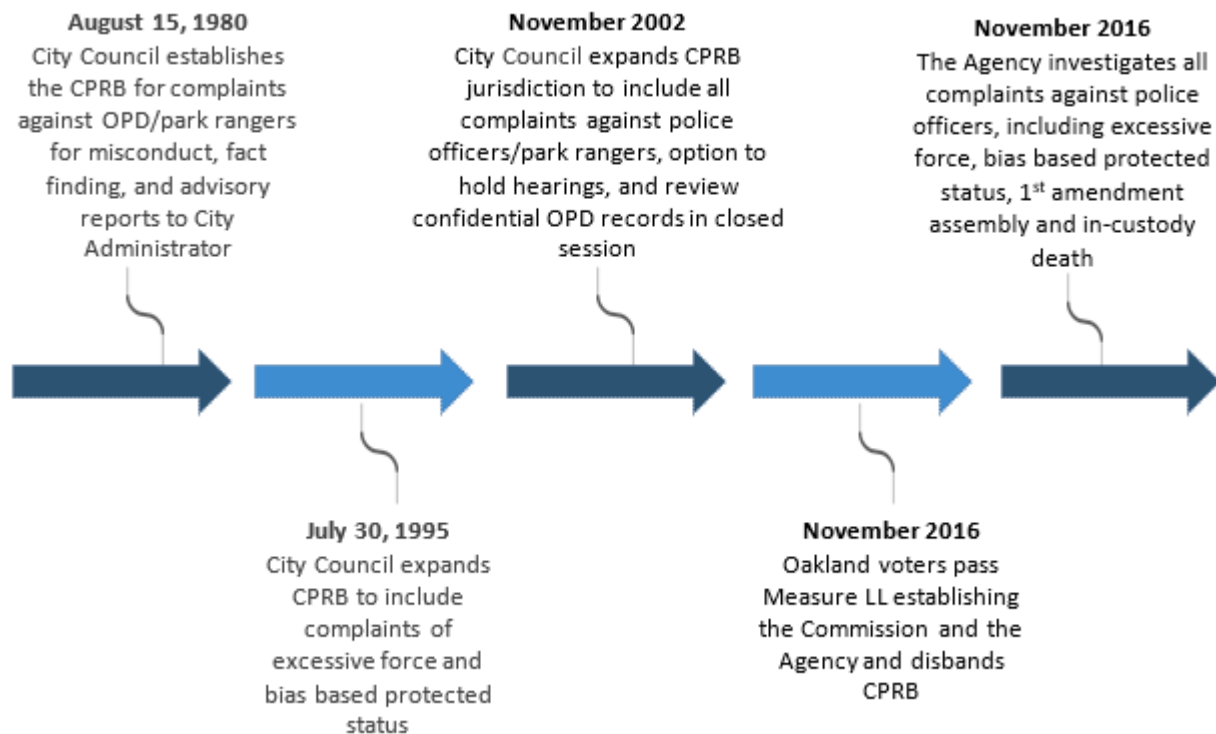
¹⁷ Full text of Municipal Code Chapter 2.46 - Community Police Review Agency: [Municipal Code Chapter 2.46](#)

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- H. No less than twice a year and as permitted by applicable law, issue a report to the Public Safety Committee which shall include the following information:
1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints and the identification of the Council District from which the complaint originated;
 2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
 3. The number of the Agency's pending investigations, and the types of Misconduct that is being investigated;
 4. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
 5. The number of Department sworn employees for whom sustained findings of misconduct were made and the level of discipline proposed;
 6. The number of closed investigations which did not result in sustained findings and/or discipline of the subject officer;
 7. The number of cases referred to mediation;
 8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304; and
 9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and the number of times a Department sworn employee failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

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Appendix E – Agency Timeline of event and changing roles of CPRB and the Agency



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Appendix F – Definitions of Allegations

Sustained - the investigation revealed facts to support the finding of sustained as the investigation disclosed a preponderance of the evidence to prove the allegation made in the complaint.

Not Sustained - the investigation did not disclose sufficient evidence to determine whether the alleged conduct occurred.

Unfounded - the investigation disclosed sufficient evidence to determine the conduct did not occur.

Exonerated - the acts which provided the basis for the complaint did occur; however, the acts were justified, lawful and proper and not violations under law or departmental policy.

No jurisdiction - the complaint is out of jurisdiction. For example, the incident occurred with a non-City of Oakland Police Officer.

No finding - there was no finding. For example, the complainant requested to withdraw the complaint.

No MOR – No violation of OPD Manual of Rules (MOR). These are allegations that do not rise to the level of being violations of actual rules or orders.

(Ord. No. 13498, § 3, 7-10-2018)



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CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612
Police Commission

May 18, 2020

The Honorable Courtney A. Ruby
Oakland City Auditor
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

RE: Joint Rebuttal Submissions

Dear City Auditor Ruby and Audit Team:

Enclosed herein please find a joint submission from the Oakland Police Commission (“Commission”) and the Community Police Review Agency (“Agency”), responding in full to the Office of the City Auditor’s April 24th Final Draft Audit Report (“Report”). Two letters address the Report’s findings and recommendations. In the first, the Commission addresses Report’s Findings 1, 2, and 5, as well as corresponding recommendations. Second, the Agency addresses Findings 3 and 4 and those recommendations. In the final enclosure, the Agency sets forth detailed responses to line items Number 17 through 34 in the accompanying matrix. As noted in remaining line items, the Commission will take up the remainder of the matrix for consideration at its next strategic retreat, which it details in the closing paragraph of its rebuttal letter.

Thank you for your time and attention.

/s/
Regina Jackson
Chair, Oakland Police Commission

/s/
John Alden
Executive Director, Oakland Community Police Review Agency

Enclosures (3): May 18, 2020 Rebuttal Letter from Oakland Police Commission
May 18, 2020 Rebuttal Letter from Oakland Community Police Review Agency
Response Matrix



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612
Police Commission

May 18, 2020

The Honorable Courtney A. Ruby
Oakland City Auditor
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

Dear City Auditor Ruby:

This is to provide the Auditor's Office ("Auditor") with the Police Commission's ("Commission") rebuttal to the Auditor's April 24 "final draft report." We are pleased the audit report acknowledges that the Commission took several successful steps toward satisfying the hundred-plus legal requirements the Auditor identifies.

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In addition to *complying with requirements*, though, the Commission has also *exercised its authorities* in a manner that the Auditor fails to fully analyze. The Commission has focused since its inception on using its authority in furtherance of the voter's intent, as well as the principles and interests articulated City Council in Ordinance No 13498 ("Enabling Ordinance" or "Ordinance"):

- "In recent years, more and more municipal jurisdictions have involved citizens in their law enforcement review systems, and highly publicized incidents of alleged or actual police misconduct and the years-in-the-making widespread public outrage over police misconduct, especially communities of color, has brought the issue of civilian oversight to center stage in the United States";
- "In January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited - and continues to audit -the Department's progress in complying with each of the fifty-two (52) tasks identified in the NSA";
- "While some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, leading to an erosion of public trust in this process"; and
- "Maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community."

Despite these and related broad statements of purpose that set out ambitious goals for the Commission – no less than comprehensive reform of policing in Oakland – the Auditor spends most of the report criticizing almost every valid exercise of the Commission's existing Charter and

② Ordinance authorities in the first two years of its existence. The Auditor’s criticisms fail to account for the full span of the Commission’s work or the full scope of the Commission’s authority, including as follows:

- ③ • The Auditor makes numerous misleading statements about the Commission’s policymaking track record, while mischaracterizing or flatly omitting most of the Commission’s work that falls squarely within its policymaking authority.
- ④ • The audit report blatantly mischaracterizes the Commission’s removal authority. The report suggests the Commission’s removal authority is rare amongst police commissions, but then acknowledges that San Francisco, Los Angeles, and Honolulu each grant their police commissions exclusive removal authority.¹ On Page 14, the audit report falsely states “On February 20, 2020, the Police Commission fired the Chief of Police without cause,² with the approval of the Mayor.” The Chief was jointly removed by the Police Commission and the Mayor, in conformance with the Charter.
- ⑤ • The audit report fails to credit the Commission for partnering with community-focused non-profits to do cutting edge work around policing issues. Instead, the audit report dismisses each partnership solely as an alleged violation of contracting rules on Page 25 – staking out a position that contradicts the Office of the City Attorney’s (“City Attorney”) training and presentation materials.
- ⑥ • The report criticizes the Commission for the steps it has taken to determine if there is enough evidence to re-open an investigation, an authority Oakland City Council granted the Commission in the Enabling Ordinance, pursuant to the Charter. As of this writing, it is our understanding that the City Attorney has signed off on a contract for services with Knox and Ross Law Group to take on this work.

A number of the Auditor’s key findings are summarily rebutted in that table on Page 6 of this letter.

⑦ Given the report’s focus on policymaking, the Auditor’s flawed findings about the Commission’s policy work are worth discussing at length. To start, the audit report misrepresents the Commission’s effort to address the missing persons case of then-19-year old Oakland resident Jonathan Bandabaila. The Commission repeatedly took issue with the Department’s failure to utilize its social media in the weeks and months following the disappearance of Jonathan to properly seek his return, while the Department reportedly used its social media accounts to seek the return of someone else’s missing pet. In October of 2019, the Commission agendized a discussion on “department policy on social media for missing and abducted persons.” At that meeting, one of the Commissioners, Commissioner Harris, briefed the Commission and the public on the Department’s General Orders regarding Missing Persons and Abducted Persons and sought

¹ On Page 50 of the report, the Auditor states: “Unlike Oakland, the Chiefs of Police in these jurisdictions report directly to the police oversight body and do not report directly to anyone else in the organization.”

² “Without cause” is a legal term that solely refers to the Charter provision that authorizes joint removal of the Chief by a vote of five members of the Commission and by the Mayor as a matter of their joint discretion, *i.e.*, without requiring any formal legal finding of cause as a precursor to removal.

input from the Department to better understand the Department's interpretation of its own policy. The Commission repeatedly noted during agendized discussions about this matter that the Department should update its policies. The Auditor states on Page 29: "Although this was an unfortunate circumstance, the Commission's involvement in this matter is not consistent with the Commission's role as established in the City Charter and the Municipal Code." To the contrary, Section 604(b)(6) grants the Commission authority to review and comment on all policies. Relatedly, OPD's manual of rules in force and effect during the first two years of the Commission's tenure places a standalone duty on the Chief and her designees to update the Department's General Orders and Policies. Yet the nuances of this dynamic – exchanges on policies between two entities responsible for changing them – fail to surface in the audit report.

8

The Commission's efforts to draft and propose new policies is similarly discredited, again without basis. Take the audit report's summary of the Commission's adoption of DGO R-02: newly restricting Oakland Police officers from asking stopped individuals whether they are on probation or parole. The report fails to credit the Commission's diligent, collaborative policy work alongside the Department or to credit individual Commissioners' community-driven efforts to seek engagement before adopting the new policy. In January, February, and March of 2019, the Commission reported its efforts to establish consensus among community stakeholders, grassroots advocates, outside experts, practitioners, and almost every single member of the executive staff of the OPD. Commissioner Prather reported back on the Commission's collaboration with OPD across multiple drafts. Commissioner Anderson worked with policy-oriented nonprofit advocacy groups and direct service organizations to redraft key legislative language in the policy. Commissioner Harris reached out to a group of people with life sentences who were released on parole and have re-acclimated, to ensure the Commission could host them, hear their voices personally, and examine the personal impact of treating police stops as extensions of the parole system.³ Once the Commission finalized its policy, the Department disputed the Commission's final version, which required the Commission to present its version alongside the Department's preferred version for the City Council to resolve. On July 9, 2019, Commissioner Anderson represented the Commission's version before the Oakland City Council, and the Council voted unanimously in support of the Commission's version of DGO R-2. Yet despite all of this policy drafting and consensus building, the audit report summarizes the Commission's half-year effort with three sentences; and none of these details are raised. None of the challenges or roadblocks the Commission successfully navigated appear in the audit report. The report states instead: "The Commission reviewed and approved two policies through 2019."

9

The audit report entirely neglects the Commission's year-long effort to review and overhaul the Department's Use of Force policies as whole. While the audit briefly discusses certain individual policy changes,⁴ those changes were independent of the ongoing overhaul of the entire policy. To

³ The Auditor has confirmed it reviewed the transcripts of these meetings. None of these details appear in the report, and instead, the Auditor inadequately summarizes the Commission's diligent work as "The Commission heard directly from impacted communities, including those currently on parole and probation, and community advocates in developing this policy."

⁴As Pages 8 and 9 of the audit report reflect, in August of 2019 at the urging of the Department, the Commission endorsed a policy change called "Special Order 9196," which addressed the deficiencies detailed in an August 2019 report issued by the Department's Inspector General. Then, in December 2019 and January 2020, the Commission passed an interim update to the Use of Force policy to account for the statewide changes it first helped to urge forward when it endorsed AB 392 in April 2019. In February 2020, the Commission responded to the Department's urgent

be clear: this broader goal is the most ambitious policy work the Commission could have possibly cut out for itself, which explains why a final overhaul was not “approved” in 2019. Use of Force changes affect several Department General Orders and Training Bulletins. One Commissioner described the overhaul as a “bear” in meeting transcripts, which he learned by connecting with professionals in the field and researching the particulars of other municipalities’ policies. The Department agreed with the Commission that the undertaking requires a considerable amount of time. Yet there is no mention whatsoever of this policy overhaul process in the audit.

The Commission’s Use of Force overhaul started as early as April of 2019, after the Commission sent a letter to the state legislature urging it to require statewide that police only use lethal force when legally necessary (known as AB 392). With AB 392 in process, the Commission decided to take on the major task of adjusting local policy so that Oakland’s requirements held its Department to higher standards than the new state requirements. Throughout 2019, developments related to the N.S.A. federal court settlement process created new concerns about points of Use of Force policy and by necessity changed the scope and nature of the overhaul. In August of 2019, the Department’s own Inspector General reported that potential misconduct was found in 45% of audited incidents. In every instance where the Department’s Inspector General determined that officers did not properly report Use of Force, the subject of the unreported force was reportedly either Hispanic or African American.⁵ In December of 2019, another incident was raised with respect to the Department’s alleged failure to deescalate a mentally ill individual, who instead was seemingly subject to excessive use of force despite not presenting a threat. These significant developments all occurred during the audit period, and the Charter authorizes the Commission to propose policies that address “elements” of the N.S.A. federal court settlement process, yet the N.S.A. process is barely mentioned in the audit report.⁶

Undaunted by the additional policy work, the Commission at each juncture responded with what Commissioner Prather called a “two track” approach, the first to address and approve individual policy changes responsive to the N.S.A. process or changes to state law, and the second “to get involved deeper into the research” on the overhaul and prepare for what would be at least “a year’s

demand to make additional changes to its Special Order 9196, which the Commission promptly approved.

⁵ A public speaker who is now a Commissioner, Vice Chair Henry Gage, detailed the report’s findings at the May 23, 2019 meeting. “Page 8, the IMT reviewed 71 use of force complaints, from August, September and November 2018. 71 reports, 67% involved the use of force against a black person. 35 of those events involved an officer pointing a weapon. Of those 35 events, excuse me, separate stat. Of those 35 events, 71% of that 35 involved pointing a weapon at a black person. Which, to me, says that it’s shameful, that after 16 years of federal oversight, the Oakland Police Department is still disproportionately using force against black people, but wait, it gets worse.

“Page 9, the IMT noticed that in multiple instances, multiple officers worked in concert to control a subject, but reporting only identified a single officer as using force. Assisting officers were listed as witnesses, because they believed their actions were not reportable uses of force. Again, disturbing, after 16 years of federal oversight. Oh, but wait, it gets worse. Page 9, in approximately 10% of those 71 incidents, OPD personnel failed to activate their body cameras. In some cases, body cameras weren’t activated until after the use of force had occurred, after 16 years of federal oversight. What’s going on? But, wait, it gets worse. Because the IMT informed OPD, regarding this non-reporting of use of force and the initial response was to defend the processes that currently existed in the department and to question the, ‘identified problematic cases.’ Come on.”

⁶ Section 604(b)(4) of the Charter vests the Commission with the power to propose changes to any policy, procedure, custom, or General Order that 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 for so long as such federal court orders and settlements remain in effect.”

worth of work.” By July 2019, the Use of Force ad hoc policy committee reported back to the Commission with a plan for its second track, the Use of Force overhaul, both to enlist research experts and to revise the entire policy, including in light of the details publicly reported by the federal court settlement process. The ad hoc committee met regularly in fall and early winter of 2019, within the reporting span the audit claims to review, to address individual Use of Force policy sections including core principles, defined terms, general considerations and policy, levels of force, levels of resistance, and de-escalation of force. Since then and through to today, the ad hoc has met on numerous occasions and reviewed every single section of the Department’s current Use of Force policy for revisions. By February and March of 2020, the Use of Force ad hoc committee prepared a public reporting process to announce new meetings and areas of sustained focus. In short, the Commission has done far more than review and approve a mere two policies.

10

As one final point worth rebutting, the audit report on Page 31 proposes that the Commission take a more “global view” of racial profiling in policing. This is an odd phrase, given that Oakland is a global city setting the pace on police oversight. The audit report recommends the Commission confine its oversight work to the Ontario, Canada Human Rights Commission’s guidelines to address racial profiling. The Ontario Human Rights Commission is not the Ontario Police Commission, and it has no experience with Oakland’s Police Department, not to mention its limited insight into the legal frameworks required by constitutional policing in American cities like Oakland. The Oakland Police Commission’s views on racial profiling are and will properly remain specific to the City of Oakland, to Oakland’s history, and to Oakland’s Police Department.

11

In closing, we appreciate the Auditor’s acknowledgement that a volunteer Commission subject to over one hundred legal requirements is already straining limited resources. This insight extends to the Auditor’s own matrix of proposed new requirements, many of which stem from a misunderstanding of this Commission’s work to date. Accordingly, the Commission will table full consideration of the Auditor’s priorities until our next off-site strategic retreat, pandemic permitting. At the retreat, we will consider the Auditor’s priorities and decide how best to strengthen internal governance, which is vital to ensure the Commission’s continued success in carrying out the vision set forth by the voters of Oakland and the Oakland City Council. For the time being, we will refocus on the matters of Commission business that we already committed to carrying out over time. We commend you for your work, thank you for this opportunity to reflect on ours, and look forward to our continued collaboration.

Sincerely,

/s/

Chair Regina Jackson
Oakland Police Commission

Summarized Table of Disputes

<p>12 The Auditor incorrectly alleges that the Chair of the Commission “directed” OPD “to write a report on [a complaint] to be presented at a later Commission meeting.”</p>	<p>The transcript at issue contradicts the Auditor’s allegation:</p> <ul style="list-style-type: none"> • From the dais, Chair Jackson to Deputy Chief Leronne Armstrong: “Can you provide any insight into this complaint or can you look into it and come back to us, so that we can sit down and try and resolve this as soon as possible?” • D.C. Armstrong: “Leronne Armstrong, deputy for police. Yes, we can provide you an informational report. We’re very familiar with this location and so we could definitely provide an informational report.”
<p>13 The Auditor incorrectly alleges “The Commission directed an OPD Manager to attend a Commission meeting even though the Manager had planned to be on vacation.”</p>	<p>This is false. The Commission first submitted a request for information in May of 2019. After reiterating the request for six months, the Commission agendaized the issue on October 10, 2019. On October 7, 2019, the Director in question insisted that the Commission should again delay the item by two weeks, as she had pre-scheduled a vacation. The Commission proceeded with the agenda item but expressly did not require the OPD Manager to attend.</p>
<p>14 The Auditor claims that the Commission fails to structure its agendas to address its core functions.</p>	<p>The Auditor has neglected to analyze crucial language in the Charter and the Enabling Ordinance, including in Section 604(b)(4) and (6), and the federal court settlement agreement expressly incorporated into Subsection (b)(4) and (5). These omissions discredit the Auditor’s interpretation of the Commission’s core functions.</p>
<p>15 “The Commission’s authority to evaluate and remove the Chief of Police is rare amongst other police oversight bodies.”</p>	<p>The Auditor elaborates on this misleading sentence, conceding that other cities in the region (e.g., San Francisco, Los Angeles, Honolulu) grant their police commission identical or even more exclusive powers to remove their Chiefs of Police: “Unlike Oakland, the Chiefs of Police in these jurisdictions report directly to the police oversight body and do not report directly to anyone else in the organization.”</p>
<p>16 “The Commission should not be directly procuring or soliciting bids for contracts.”</p>	<p>The Commission exercises its purchasing authority in compliance with the City’s policies, as it has been directed to do. On September 12, 2019, the City Attorney trained the Commission on its new purchasing authority. The City Attorney advised that an “informal” bidding process is allowable for contracts between \$500 and \$49,999. The City Attorney also advised: “The CPRA Executive Director, on behalf of the Commission, may request the City Administrator to waive the informal competitive solicitation process up to 50,000.”</p>

17

The audit report mischaracterizes the Commission's subpoena to the CPRA regarding its review of the officer-involved shooting of Joshua Pawlik, stating: "There is a case that was investigated by both IAD and the Agency. Both entities generally reached the same conclusion exonerating the officers."

In February of 2019, the Compliance Monitor that oversees the N.S.A. found the Department's investigations into the shooting of Mr. Pawlik violated department policy.

The independent monitoring team found and highlighted numerous errors in IAD's and the Agency's investigations, rejected IAD's principal conclusions, and faulted the Department's failure to enforce "responsible police practices."

18

"The Commission has not completed all required trainings."

While the Commission acknowledges that it must satisfy all of the required trainings, we are glad the Auditor has acknowledged the challenge posed by the City Administration's restrictions around after-hours trainings. The report confirms that trainings are only "scheduled during the day when some of the Commissioners are unable to take time from their regular jobs." We note also that the Commission has completed a number of trainings that are falsely reflected as not complete on Page 12 of the audit report, even though the Commission provided a correct, updated list of completed trainings to the audit team.

19

"The Commission has refused to allow the City Attorney to sit on closed session because of the lack of trust."

The Commission's counsel attends all closed sessions and enjoys a productive relationship with the City Attorney's Office.

"The Commission has not established a code of conduct."

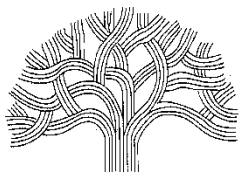
The Commission has bylaws that include provisions typically found in a code of conduct. Still, the Commission appreciates the advice and will renew our approach to governance during the next audit cycle, including by adopting a new code of conduct.

20

"[The Commission] did not provide an opinion as to whether the budget was aligned with OPD's policies, procedures, customs, and general orders."

In May of 2019, the Commission agendaized a hearing on OPD's budget and invited the Chief. The Commission gave the Chief substantive feedback about the budget. Commissioner Prather noted that a budget is "a financial expression of the values of the department." He stated: "What I don't see here, sorry to use your term, Chief, is a transformative budget." Commissioner Prather then opined: "What I don't see here is a department that's committed to transformative change. And it needs to be reflected in this budget, and it gets short shrift at the end of the [Department's] PowerPoint. It talks about challenges and opportunities, but I think it starts from you, Chief. And your mandate on how this department needs to be run. It needs to be woven throughout this budget. In every PowerPoint, every time it's presented, it

	needs to feel like the Department is committed to change.” The Commissioner’s full statement is available in a meeting transcript the auditor confirms it has reviewed. In response, the Chief expressly characterized the input as a “reprimand” and did not address any of these points.
21 “The Commission did not meet at least twice per year outside of City Hall.”	The Commission held two off-site meetings in 2019, including a February 2019 community assembly at Taylor Memorial Church in Oakland and a December 2019 meeting at the East Oakland Youth Development Center.
22 “The Commission has not adequately controlled its meetings and agendas.”	While the Commission will exercise greater control over speaker time, the Commission has controlled its agendas quite well, given the legal requirements it must satisfy and the vision set out by the voters of Oakland as well as the City Council.
23 “The Commission has not requested an annual report from the Chief of Police” and “The Commission did not request the City Attorney to submit semi-annual reports.”	The Commission has sent out requests and acknowledges it will continue to request these annual reports.



CITY OF OAKLAND COMMUNITY POLICE REVIEW AGENCY

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May 18, 2020

The Honorable Courtney A. Ruby
Oakland City Auditor
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

RE: CPRA Rebuttal Submission

Dear City Auditor Ruby and Audit Team:

Introduction

The City of Oakland Community Police Review Agency (CPRA) was created just over two years ago to undertake a bold revisioning of the Oakland police oversight system. During its first two years, the Commission has moved quickly to increase expectations for CPRA, secure new resources for CPRA, and add new leadership. Naturally, these changes take time to accomplish, and much more work needs to be done. While CPRA agrees with nearly all of the Auditor's findings with regards to the first 20 months of CPRA's performance, the Agency also sees significant accomplishments in that time. Fulfillment of the Auditor's recommendations, many of which are already completed, is a priority for CPRA and part of CPRA's overall commitment to accomplishing the vision of Measure LL.

Overview

CPRA is a work in progress.

CPRA's predecessor agency, the Civilian Police Review Board (CPRB), had a modest scope of work by comparison. The number of cases was low, sometimes only a few dozen in a year; the allegations usually were few in number within each case; and the allegations were made against a small number of officers in each case. CPRB investigators conducted relatively few interviews compared to the number completed by the Police Department in those same cases, placing the CPRB investigators in the position of reviewing the work of others in many cases, rather than investigating from scratch. The low number of cases enabled the Executive Director to

effectively supervise each case personally, leading to modest policies and procedures. In the police oversight field, this style of work, essentially double-checking the work of the Internal Affairs Division (IAD), is often referred to as a “review” model.

Since its inception in December of 2017 pursuant to Measure LL, CPRA has had to use the same modest resources available to CPRB to switch to an entirely different model. In this model, CPRA investigates a host of specific kinds of cases, as mandated by Charter, now numbering in the low hundreds in a year. The allegations are more complex and more numerous, and the number of officers at issue are significantly greater. CPRA investigators conduct more interviews than their CPRB predecessors, and must dig more deeply and independently into their cases than before. Rather than double-checking IAD work, CPRA now independently identifies violations and seeks discipline. CPRA’s reports are no longer merely advisory, as was the case under CPRB, but now serve as the foundation of police officer discipline litigation. In short, the Agency’s cases are now more complicated, more consequential, and more numerous, and thus require a more robust system of supervision, policy, and procedure than before. In the police oversight field, this model is often referred to as an “investigative” model.

The transition from CPRB’s review role to CPRA’s investigative role has been challenging. CPRA’s resources increased only modestly. Individual caseloads substantially increased. And in the first year and half, the Agency had three different Interim Executive Directors. The current permanent Executive Director, John Alden, came aboard one month prior to the close of the Auditor’s review of CPRA. Given this backdrop, the Auditor’s findings with regards to improvements at CPRA are to be expected. CPRA agrees with those findings in most regards, many of which have been accomplished in the roughly nine months since the close of the review period.

In addition, substantial achievements have been completed since that time. The monthly caseload is coming down, indicating that cases are being resolved faster. CPRA has sustained many cases, including some that are typically hard for civilian oversight agencies to investigate. Processes for managing CPRA’s caseload have substantially improved. These achievements indicate that CPRA is on the right track to successfully fulfill its mandate under the City Charter.

Agency Staffing

Many of the detailed responses to audit categories and specific facts contained in this Agency response are associated with staffing issues which have affected every part of the Agency’s operations and impacted its ability to perform both core and ancillary functions. The audit notes several of these factors when discussing specific identified deficiencies, however the Agency believes that the nature of these notations – spread amongst a number of specific identified deficiencies in Agency policies, procedures and core work - do not provide context for understanding the causes of these deficiencies or providing a viable path towards improvements. In December 2017, Oakland Charter Section 604 went into effect, and the Community Police Review Agency was formed from the existing staff of the previous Citizen’s Police Review Board. As noted above, this transition increased the workload on staff of the new Agency both in investigations as well as in administrative and support capacities.

Before this transition, the CPRB supervisory structure was entirely flat – all employees reported directly to the Executive Director – and most cases were directly supervised by the Executive Director. The significant increase in workload in 2018 required CPRA to transition to a more structured model of supervision. In order to address this issue, CPRA now has a mid-level supervisor, classified as a Complaint Investigator III, who supervises the investigative staff. CPRA has received authorization for, and is interviewing for, a second Complaint Investigator III to further assist with this mid-level supervision.

This transition also granted the new investigative Agency much greater power to positively determine findings and disciplinary recommendations arising from investigations of Officer misconduct by sworn members of the Oakland Police Department – on par with those of the Chief of Police and the Internal Affairs Department for the purposes of the investigations conducted by the Agency. These new powers and authorities also created additional administrative tasks associated with Agency investigations – including the need to arrive at disciplinary findings (as opposed to advisory recommendations), and the preparation of Skelly materials and other legal documentation of the investigation required to form part of the City's official disciplinary packets for employee relations. In addition to the additional administrative tasks associated with every investigation, the Agency was also mandated under the Charter to investigate all complaints by members of the public in certain allegation categories, including use of force, profiling, and first amendment assembly; and findings for all City investigations of these categories require concurrence between the Agency and the Police Department. Therefore, not only did the administrative requirements of individual cases increase, the number of cases which the Agency was legally required to investigate also increased. In January 2018, all hiring within the Agency was frozen, further impacting the ability of existing staff to address the increased investigative demands created by the Charter change that mandated this additional work.

In addition to the increased investigative load, the Agency was tasked as the primary administrative support of the newly empaneled Oakland Police Commission – a body with vastly increased powers and range of operations over the previous Citizens Police Review Board. This administrative support included support of Commission meetings, agendas, minutes and training, as well as responsiveness to other Commission requests including in the areas of contracting, policy, interaction with other City offices, and support of Commission activities. From December 2017 until November 2018, the Agency was the exclusive channel for providing such administrative support. Beginning in November 2018, an Administrative Analyst II position was hired by the City Administrator's Office to help support Commission activities, however the Agency continued to provide many support services. In the long run, further direct support for the Commission will be necessary.

In November 2018, the CPRA Interim Executive Director Anthony Finnell, who had transitioned to the Agency after heading the CPRB, was fired. In mid-December 2018, CPRA supervising Investigator III Karen Tom was appointed Acting Director. In May 2019, CPRA Acting Director Mike Nisperos was appointed, who served in that capacity for 3 months until the hiring of current Executive Director John Alden at the end of July, 2019. The numerous changes in Agency leadership created additional hurdles to standardizing procedures. Several institutional

controls which are cited in the City Auditor's preliminary audit draft as being deficient, including formalized mechanisms for assigning cases (for example based on case complexity), supervision of intake and investigators, staff training plans, and other operational elements which had been in place within the CPRB investigative structure and continued through the beginning of 2018 subsequently broke down through these multiple transitions, or were found inadequate to the new responsibilities of CPRA and thus were abandoned as new procedures were considered. While the Agency does not dispute many of the specific findings that these controls were not in place during the entirety of the evaluation period, these lapses are at least in part due to transitions in leadership and continuity of standardized practice through this period.

Of note, during the period analyzed, in addition to the hiring freeze detailed above, the Agency also had two members of staff (one intake technician and the Agency Policy Analyst) who took extended parental leave through the first half of 2019, and another investigator who resigned in late July 2019 prior to the hiring of additional investigative staff in September of that year under the new Director, just after the review period ended. Therefore, for considerable periods of time active Agency staffing was less than it had been as staff to the CPRB.

While none of these factors excuse lapses in investigatory controls or minimize the need to assure that such controls, additional training, and standardization of Agency practices are put into effect (many of which the Agency has implemented, and continues to develop), they provide broader context for the existence of those lapses - and are specific causes of several of them - as noted in the specific responses in this document, below, and accompanying recommendations matrix.

Agency Realm of Control

In addition to the staffing issues described above, CPRA has little or no independent control over some of the issues noted in the Auditor's report.

City Charter Section 604 establishing the Commission and Agency was created through a popular vote in the form of Measure LL, however some provisions of that legislation were crafted without concurrent identification of the resources required to bring the City into compliance with its provisions. So, for example, under section 604 the CPRA is required to occupy a public facing ground floor office location; however, assignment of City property to specific uses forms part of the City's overall space allocation plan and/or Council Approval of the purchase of additional property. The CPRA is out of compliance with this aspect of the Charter but exercises no independent control over decisions about where to locate the Agency's physical offices.

Likewise, the audit identifies the lack of an Agency outreach plan or continuing outreach activities. However, the Agency has no staff dedicated to outreach, nor any budget set aside for that purpose. All existing staff have completely occupied with completing charter-mandated tasks, leaving no bandwidth for outreach. Given the COVID financial crisis, additional resources for outreach in Fiscal Year (FY) '20-'21 appear unlikely. To properly address this deficiency, the

Agency must continue to work with other City leaders to secure additional staffing and resources specific to outreach in the future.

In addition to resource and physical plant issues, there are legal mandates that have also caused deficiencies but which the Agency cannot control. For example, current city ordinances discuss the handling of Agency “administrative closures,” and the degree to which the Oakland Police Commission is able to access and require additional investigation of cases so closed. However, “administrative closure” is a term with no legal definition in state law or City Charter and code. Likewise, aspects of the Charter language create bottlenecks to Agency processes and work-flow that require a charter amendment or additional legislation to address. For example, the Charter provision that only the Agency Executive Director is allowed access to “personnel records” is confusing, as state law defines all of CPRA’s case files as “personnel files” of police officers. This section has been interpreted to mean that only the Executive Director can access officers’ prior disciplinary history (which in most agencies is considered a mandatory step for line investigators), or attend meetings with the Police Department to reach concurrence on setting discipline in sustained cases, even in the most modest of cases. Agency efficiency is impaired by the confusion created by these well intentioned but, regrettably, poorly drafted policies, but has no independent way to address these impacts without further assistance from other parts of City Government.

As with the staffing issues discussed in the first section, issues that remain outside of direct Agency control do not by themselves change the City Auditor’s finding of deficiencies. However, this context does inform the appropriate remedies to address these findings. In addition to the above broad responses to the Audit, the CPRA has the following responses to specific findings. CPRA’s responses to specific recommendations (many of which are duplicative of the points made in the findings) are separately listed in the accompanying matrix.

AGENCY ACHIEVEMENTS

Since its creation, CPRA has had a number of significant achievements. Some are internal improvements to the agency structure and health. As detailed in responses to findings below, total staffing has improved and training programs are now underway for those staff. There are now explicit expectations for investigators around deadlines and investigative planning, forms and procedures to help structure their work, and enhanced oversight and tracking of their casework. The monthly caseload is coming down, as is time to completion of cases. CPRA now has, and continues to add, mid-level supervisors to help develop policy and streamline internal processes. Thanks to the Police Commission, leadership within the Agency has stabilized.

Other achievements are case-specific. Police officer personnel laws prohibit descriptions of the details of specific cases here. But CPRA’s statistical reports to the Police Commission since inception show significant accomplishments. For example, those reports show that CPRA often identifies allegations in cases that were not found by the Oakland Police Department in their initial review, including sustained claims of Fourth Amendment search and seizure violations, and police officer untruthfulness. Across police oversight, racial bias cases are almost never sustained, largely because they are difficult to prove. CPRA has not only sustained such a case,

but also secured Police Department concurrence in that matter. CPRA has sustained Use of Force violations, including in the most serious Level 1 Use of Force cases, which is also a rare result in oversight. Ultimately the quality of each investigation is the best measure of an oversight Agency's work, not the total number or kind of cases sustained. But these recent results show that CPRA is able to investigate the most complicated claims and, when justified by the facts, sustain discipline in those cases. For this reason, the public should be confident that CPRA can and will do the job well.

RESPONSE TO FINDING THREE

Several of the issues noted in Finding Three are not under the direct control of CPRA. Those include the findings that, during the review period in 2018-2019, CPRA:

- Is not located in a space visible to the public as the Municipal Code requires;
- Has not always received requested information from IAD and other OPD departments within 10 days;
- Has not always received notification of a complaint from IAD within 1 day;
- Needs to improve its processes for classifying and submitting administrative enclosures/dismissals to the Commission.

As noted above, allocation of office space is controlled by the City Administrator's Office, and depends on availability and budget. CPRA is eager to receive authorization for such space, and will continue to work with the City Administrator's Office on this issue.

As to information and complaints not received from OPD in a timely fashion, naturally such failures are ultimately up to the provider. CPRA now tracks such requests in each case, and communicates at both the staff and supervisory level with IAD and OPD in real time as delays occur. The information and complaints described can now be provided electronically to CPRA directly, so transmission time is no longer a factor in timely delivery.

Finally, the issue of "administrative closures" requires legislative action to resolve, and is thus outside of the direct control of CPRA. The Charter makes no mention of this phrase, nor does state law. Historically, under CPRB, there were times when this phrase was used to mean a case was closed without need of a hearing before the full Citizen Complaint Review Board. Today, under the current Charter, cases are only brought to the Police Commission's Disciplinary Committee for findings when the Police Chief and CPRA Director do not concur as to case resolution. Today, nearly all cases are resolved by reaching concurrence. If "administrative closure" were to mean all cases closed without need of a Discipline Committee, nearly every case would have to go to the Commission for approval of closure, swamping the Commission with hundreds of case closures annually. Thus, "administrative closure" does not even have a clear, sensible meaning within the current Charter process for resolving cases. CPRA is working closely with others in the City of Oakland on a ballot measure for fall 2020 that could set the stage for resolving this issue, but ultimately that relief must come from decision-makers outside of CPRA.

Several of the issues noted in Finding Three have been remedied since the Audit commenced. Those include that CPRA:

- Has not completed investigations in accordance with timeframes outlined in the City Charter and State Law;
- Has not always videotaped interviews of officers who allegedly committed Class 1 offenses;
- Has not provided sufficient training to Agency staff.
-

Since the audit period ended in August, 2019, CPRA has completed all cases within the timeframes dictated by state law. In addition, the total caseload has come down from nearly 140 cases pending at any one time to 84 cases pending, which also improves the speed of case resolution. CPRA is well on track to be able to meet the 180-day goal set in the Charter in the lion's share of cases in the future, provided that CPRA has adequate investigative staff and support. To the extent that two cases were closed late during the review period, those lapses occurred at a time that leadership was in transition, supervision of investigators was modest, internal controls were lacking, and the agency was understaffed. As described elsewhere in this response, CPRA has made great strides in securing leadership, improving supervision, creating internal controls, and augmenting staffing, such that failures to complete cases within the state's statute of limitations should never occur again.

All interviews of accused officers in Class 1 disciplinary cases are now videotaped. CPRA has videotaping equipment, and has provided all investigative staff training on how and when to use that equipment.

As to training, CPRA had a set of new hires in the fall of 2019, providing the opportunity to test a new training syllabus on those new hires. As those hires move forward to the completion of their probationary periods, CPRA will assess whether that training was successful, and how it might be improved moving forward for future hires. CPRA is now hiring for a Complaint Investigator III, which process will allow for additional staff to provide training to both Intake Technicians and Complaint Investigators.

A final sub-point within Finding Three is that CPRA "[d]oes not meet the City Charter's staffing requirements." In this regard, CPRA has made great strides. In the fall of 2019, just after the evaluation period ended, CPRA hired three more Complaint Investigator IIs. CPRA also began the process of securing approval for an additional Complaint Investigator III in 2019, received approval for such a hire in early 2020, and is interviewing candidates now (May 2020). Full staffing should be accomplished in the summer of 2020.

RESPONSE TO FINDING FOUR

An overarching issue in Finding Four, as the Auditor observes, is what sort of agency CPRA should be: an investigative agency, or a review agency? CPRA and the Police Commission have discussed this issue since the close of the review period, and reached consensus that CPRA

should strive to achieve the investigative model as much as possible. In this regard, CPRA concurs with most of the Auditor's points in Finding Four.

In Finding Four, the Auditor noted that CPRA had not formalized its complaint intake process. Since the review period ended, CPRA has given Intake Technicians much more detailed instructions about identifying allegations, requesting evidence, and how and when to memorialize and organize the results. Moving forward, CPRA seeks to hire an additional Complaint Investigator III to assist with supervision, including creation of enhanced structure for Intake Technicians.

The Auditor also noted that CPRA had not documented its considerations for assigning staff to conduct investigations. This may be one of the few points with respect to which CPRA and the Auditor have some disagreement. Each case is unique, and so are the skill sets of each investigator. All Complaint Investigator IIs should have similar baseline skills, but naturally some may speak different languages other than English, have greater skill with specific kinds of cases, or be better at achieving rapport with certain kinds of complainants. Understanding how these soft skills match, or do not match, specific cases is difficult to quantify in a routinized way. Likewise, caseloads and deadlines vary from investigator to investigator, and sometimes assigned cases take unexpected turns. Supervisors in this field must develop the human touch of assessing how these varied factors make one or another investigator best suited to specific cases. The following three sub-points listed in Finding Four have been addressed since the Auditor's review period. The Auditor noted in those three points that CPRA had not:

- Established formal planning processes for investigations;
- Documented requirements for investigations; and
- Established a quality control system to ensure that its policies and procedures are followed.

CPRA now requires Complaint Investigators to complete an investigative plan within the first week in which they are assigned the case. CPRA has a standard investigate plan template for this purpose, listing key requirements in each case. Each investigator customizes their plan for each case and submits that plan to their supervisor for approval. This process prompts each investigator to discuss with their supervisor a strategy for gathering and assessing the evidence relevant to the allegations in their case, and doing so expeditiously. These investigative plans also provide a yardstick against which the timeliness and thoroughness of the investigator's work is assessed at the end of the investigation.

These investigative plans are in keeping with a series of new case management policies and procedures at CPRA. CPRA now has deadlines for key steps in cases for both Intake Technicians and Complaint Investigators, forms and procedures for documenting 3304 (statute of limitations) calculation and proof, and standardize report forms that include a signature line for the Investigator and Executive Director. The standardization of final reports is especially helpful in assessing the work of investigators in a neutral way across all incumbents within the job

classification, and ensuring thorough, complete final products. These policies, among others, have substantially increased supervision, evaluation, and auditing of casework.

In addition, CPRA agrees with the Auditor that having investigators complete their own interviews of key officers, rather than merely relying on those conducted by IAD, is essential in completing high quality investigations. CPRA now starts cases earlier, giving the Agency more time to complete such interviews, and encourages CPRA staff to conduct their own interviews whenever possible. To facilitate this, CPRA has provided additional interview technique training to investigators, has required investigators to assess which interviews they might want to conduct themselves as part of their investigative plan, and has trained investigators on techniques for complying with recent state law changes regarding second interviews of officers so as to encourage second interviews as a viable tool for investigators.

Finally, the Auditor found that CPRA had not implemented a strong management information system to monitor the status of investigations and to provide statistical data on its performance. CPRA agrees that the database project, as it stood during the review period, was not yet adequate to monitor the status of investigations. Since that time, CPRA has renewed its engagement with the City of Oakland Information Technology Department on this issue to improve the database, especially tools in that database for tracking case progress.

CONCLUSION

CPRA has made great strides in its first two years. While the Auditor is correct that CPRA still had not completed eight of the Charter's requirements by August, 2019, the Auditor also found that the Agency completed another 31 Charter requirements in those first two years. Nearly all of the Agency's remaining eight tasks, as identified by the Auditor, have been completed since the audit period ended in August, 2019. CPRA has made tremendous progress in caseload, staffing, management, and policies and procedures. And the Agency has even managed to sustain difficult, complex cases during that time. Overall, CPRA is progressing well given the tremendous challenges involved in transitioning from CPRB to CPRA.

Sincerely,



John Alden
Executive Director
Community Police Review Agency

Enclosure: Auditor's Matrix

	City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
1	<p>To increase its effectiveness and ensure compliance with the City Charter and the Municipal Code, the Commission should implement the following recommendations:</p> <ol style="list-style-type: none"> 1. Propose to add a senior level staff to assist the Commission in implementing its annual work plan and strategic plan, in addition to managing the day to day responsibilities of the Commission. 2. Develop formal goals and objectives to measure whether the Commission is having a positive effect on policing in Oakland. 3. Develop a strategic plan that identifies what the Commission needs to do to achieve its goals and objectives, including implementing all City Charter and Municipal Code requirements and including a plan for outreach to the community. 	<p>Items 1-5, 7, and 8 will come up for consideration at Commission's next off-site strategic retreat.</p>	<p>Commission</p> <p>Commission</p> <p>Commission</p>	<p>Consideration of items 1-5, 7, and 8 in process</p>



	<ul style="list-style-type: none">4. Develop annual workplans to address its strategic plan goals.5. Develop policies and procedures for its agenda management process, including compliance with the Brown Act and ensure agenda items are within its jurisdiction and are prioritized based on importance.6. Develop policies and procedures, or by-laws, for conducting all aspects of the Commission's oversight function including:<ul style="list-style-type: none">a. Establishing by-laws that govern how the Commission should operate including defining the roles of the Chair, the Vice-Chair, and its committeesb. Developing an effective process to review OPD's policies, practices, customs, and general orders to identify and prioritize areas for improvement. In addition, prioritize new policies and practicesc. Monitoring the training requirements of Commission members and consider providing some trainings online so that		<p>Commission</p> <p>Commission</p> <p>See Rebuttal</p>	
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	<p>Commissioners can take them at their convenience</p> <p>d. Requesting and reviewing reports from the Chief of Police and the City Attorney</p> <p>e. Evaluating the Chief of Police and Agency Director at least annually</p> <p>f. Reviewing and commenting on the education and training of OPD's sworn employees regarding the signs and symptoms of stress, drug abuse, alcoholism, and emotional health issues</p> <p>g. Reviewing and approving administrative closures and dismissal of cases</p> <p>h. Reviewing OPD's budget to ensure that it aligns with OPD's policies, procedures, customs, and general orders</p> <p>i. Ensuring full-compliance with the Brown Act</p> <p>j. Meeting, as a body, at least twice per year outside of City Hall</p>			
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	<p>k. Providing guidance to the Agency on how to prioritize cases</p> <p>l. Establishing a mediation program for complaints</p> <p>m. Releasing audio and video tapes of Class I alleged offenses</p> <p>7. Prepare an annual report summarizing the Commission's progress in achieving its goals and objectives, as well its progress in implementing its strategic plan and annual workplans. This information should be included on the Commission's website.</p> <p>8. Develop a budget proposal including sufficient resources to assist the Commission and Agency in carrying out duties.</p> <p>To ensure new Commissioners and oversight bodies are prepared to assume their duties prior to being seated, the City Administration, with the assistance of the Commission, should:</p> <p>9. Establish a formal orientation program which includes the following:</p> <ul style="list-style-type: none">• Meetings with the local government manager and other Commissioners• Orientation notebook		<p>Commission</p> <p>Commission</p> <p>City Administration and Commission</p>	
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	<ul style="list-style-type: none">• Department presentations• Organizational/departmental videos <p>The orientation program should also cover issues relevant to Commissioners such as:</p> <ul style="list-style-type: none">• Legal requirements and conflicts of interest• Expectations regarding ethical conduct• Provisions regarding sunshine laws or open meeting laws• City norms, policies, procedures, and by-laws• Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order)• Commissioners' roles regarding its own committees and serving on other boards and committees• Media relations (including social media)• Contact and Communication with staff <p>In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.</p>			
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	<p>To improve the working relationship between the City Administration and the Police Commission, the City Administration and the Commission should:</p> <p>10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.</p>		City Administration and Commission	
2	<p>To address these issues, the Commission should implement the following recommendations:</p> <p>11. Use a more systematic approach for addressing racial profiling in law enforcement in Oakland. This approach should include, but not be limited to acknowledging racial profiling as a reality, engaging the communities affected, adopting policy guidance to address and end racial profiling, implementing data collection of race data to measure progress in reducing racial-disparities in law and monitoring progress to assess</p>		See Rebuttal	



	<p>whether new policies are having a positive effect on reducing racial profiling.</p> <p>12. Obtain training on conducting and managing public meetings, including how to address public comments in general.</p> <p>13. Ensure agenda items are consistent with the Commission's mission and enforce limits on public comments.</p> <p>14. Develop a written code of conduct policy. This policy should address the desired behavior and values that the Commission should be promoting. The policy should also address the enforcement of the policy such as censure or removal from the Commission if the Commissioners do not comply with the code of conduct.</p> <p>15. Develop a comprehensive social media policy that explains restrictions on how Commissioners can use social media.</p> <p>To address situations when Commissioners contact City staff directly, the City Administration should:</p> <p>16. Develop the following protocols:</p> <ul style="list-style-type: none">• Guidance reminding staff to not respond to Commissioners without authorization and for notifying		<p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p>	
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	<p>department officials of when Commissioners contact staff directly</p> <ul style="list-style-type: none"> • Guidance addressing situations when Commissioners contact staff directly • Guidance elevating the matter to the Commission, the City Council, or to the City Attorney 			
3	<p>To ensure compliance with the Municipal Code requirement regarding the Agency's office location, the City Administration and the Agency should:</p> <p>17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.</p> <p>To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should:</p> <p>18. Work with Human Resources to ensure that hiring lists are kept up-to-date to have sufficient candidates available for hiring when vacancies occur.</p>	<p>17. Agreed. CPRA looks forward to working with the City Administrator's Office to locate suitable office space.</p> <p>18. Agreed. CPRA now maintains current lists for the Complaint Investigator II and Complaint Investigator III positions. These lists will be updated regularly, and as frequently as the City of Oakland Civil Service Rules</p>	<p>City Administrator's Office</p> <p>CPRA in conjunction with Human Resources Management.</p>	<p>Completed</p>



	<p>19. Establish written goals and objectives regarding the timeliness of their investigations. It should define the various aspects of the investigative process that need to be tracked. Finally, it should develop management reporting systems to allow management to monitor the timeliness of investigations.</p>	<p>allow. CPRA shares the classification of Intake Technician with the Police Department, and in the future will work with the Police Department on keeping that list current, also.</p> <p>19. Agreed. Since this audit was conducted, CPRA instituted written deadlines for the work of Intake Technicians and Complaint Investigators. These deadlines include separate dates for completion of key tasks, such as ordering documents, intake summaries, investigative plans, and investigative reports, among other tasks. These deadlines are monitored through reports and submission of key documents up to supervisors, and feedback in performance evaluations.</p>	<p>CPRA</p>	<p>Completed</p>
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	<p>20. Develop written policies and procedures to ensure investigations are concluded in a timely manner.</p>	<p>20. Agreed. As noted in #19, Intake Technicians and Complaint Investigators have been instructed in writing to meet specific deadlines for specific steps in the investigative process. These include creation of an investigative plan at the inception of a Complaint Investigator's work on a case so they can create a strategy for prioritizing cases and allegations within cases, and strategies for timely gathering of the relevant evidence.</p>	<p>CPRA</p>	<p>Completed</p>
	<p>21. Develop written policies and procedures to ensure all interviews with officers who allegedly committed Class I offenses are videotaped.</p>	<p>21. Agreed. All Complaint Investigators have been instructed in writing to videotape interviews in Class I cases. CPRA also has videotaping equipment, and has instructed Investigators as to how to use that equipment and store the resulting recording.</p>	<p>CPRA</p>	<p>Completed</p>



	<p>22. Develop policies and procedures to ensure that investigators document the date that information is requested and received from OPD to track compliance with the 10-day requirement. Moreover, the Agency should work with OPD to receive information via direct access.</p>	<p>22. Agreed. All Intake Technicians and Complaint Investigators now track requests made to OPD in their files, and also track when the documents are received. Staff are instructed to escalate failure to provide documents in a timely fashion to supervisors, who in turn alert senior staff at OPD to the failure. OPD and IAD now have a secure electronic delivery mechanism for most documents, which speeds delivery and facilitates tracking.</p>	<p>CPRA</p>	<p>Completed</p>
	<p>23. Develop policies and procedures to ensure complaints are received timely from IAD, within 1 day of IAD's receipt.</p>	<p>23. Agreed. CPRA now has an electronic transmission mechanism for instantaneous receipt of complaints directly from IAD. All that remains is for IAD to transmit them.</p>	<p>IAD</p>	<p>CPRA work completed.</p>



	<p>24. Establish criteria for defining administrative closures and immediately begin reporting all administrative closures to the Police Commission on a regular basis.</p>	<p>24. Agreed. The term “administrative closure” has no clear meaning given the work flow described in Charter Section 604. CPRA has worked with the City Council and others to facilitate a ballot measure in fall 2020 that would eliminate the need for the term “administrative closure.” Once the ballot measure has appeared on the ballot – or it is confirmed it will not be placed on the ballot – CPRA will work with other City agencies to present follow-up legislation either eliminating the use of this term, or giving it a meaning that fits within the structure of the City Charter.</p>	<p>CPRA in conjunction with City Council and Office of the City Attorney</p>	<p>Early 2021</p>
	<p>25. Develop and implement a formal training program for all Agency staff.</p>	<p>25. Agreed. CPRA implemented a training program for a set of new Complaint Investigators in the fall of 2019. As these Complaint Investigators progress to</p>	<p>CPRA</p>	<p>First Iteration Completed. CPRA will continue to improve this product.</p>



	<p>26. Develop an outreach plan that includes written goals and objectives, outreach activities, and monitoring reports to assess its progress in reaching its outreach goals.</p>	<p>completion of their probationary periods, CPRA will assess whether that training program should be continued or modified.</p> <p>26. Agreed. Within the current CPRA staffing structure, there are insufficient personnel to conduct outreach. CPRA requested funding for outreach personnel in their original FY 20/21 budget proposal. Given the financial shortfalls caused by COVID, funding for such a position is uncertain. The outreach plan described here will not be accomplishable until FY 21/22 if additional staffing cannot be secured in FY 20/21.</p>	<p>CPRA</p>	<p>Late 2021, depending on budget allocations for FY '21-'22.</p>
<p>4</p>	<p>To ensure efficient, effective, compliant, and consistent investigations, the Agency should:</p>			



	<p>27. Define and document the overall processes necessary to undertake investigations, including establishing policies and procedures for the intake process.</p>	<p>27. Agreed. CPRA is currently hiring for an additional Complaint Investigator III to oversee, define, and document the intake process. CPRA has created a first iteration of policies and procedures for both investigations and intake through performance expectations, and will be refining those as they are tested this calendar year.</p>	<p>CPRA</p>	<p>Late 2020.</p>
	<p>28. Establish and document a formal process for assigning staff to an investigation that considers the complexity of the investigation, staff experience and background, and whether the investigator is independent and free from personal impairments.</p>	<p>28. Disagree. The assignment of cases to individual investigators is complex, and depends heavily on matching individual skills to the unique complexities of each case. Overall the assignment process is a soft skill art, not a process susceptible to hard routinization as suggested here.</p>	<p>CPRA</p>	



	<p>29. Agency management should ensure all job qualifications are met before hiring an investigator, as the role of an investigator requires extensive experience and the ability to interpret applicable laws and regulations.</p> <p>30. Establish procedures for the planning of investigations, including creating a standard investigation plan with clear objectives and methodology for the investigation. This plan should be reviewed and approved by the Supervisor before the formal investigation commences.</p> <p>31. Standardize reports to ensure consistency in how investigations are conducted and reported. In addition, the Executive Director should formally sign off on the final report of the investigation.</p>	<p>29. Agreed, within the rules set forth in the civil service system.</p> <p>30. Agreed. CPRA has recently created a requirement that Complaint Investigators create investigative plans for each case. This calendar year, CPRA will assess which plans were the most effective as we refine standardized investigative plans moving forward.</p> <p>31. Agreed. CPRA has created a standardized report structure and begun using it across all investigations. That form includes a signature line for the Executive Director and also the assigned Complaint Investigator.</p>	<p>CPRA and Human Resources Management.</p> <p>CPRA</p> <p>CPRA</p>	<p>Completed.</p> <p>Completed.</p> <p>Completed.</p>
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	<p>32. Establish policies and procedures that outline which phases of an investigation require quality review and how this will be documented.</p>	<p>32. Agreed. CPRA has already implemented supervisory review at the initial screening, intake summary, investigative plan, and report writing stages of the investigation. The intake summary, investigative plan, and final report are all documented, which assists with quality control.</p>	<p>CPRA</p>	<p>Completed.</p>
	<p>33. Management should acquire a case management system to assist management in performing its responsibilities of case management and reporting, measuring its accomplishments, and responding to inquiries.</p>	<p>33. Agreed. CPRA continues to work with IT to improve the existing CPRA database in this regard.</p>	<p>CPRA and Information Technology.</p>	<p>Mid-2021.</p>
	<p>34. Work with the Commission to establish the preferred investigative agency oversight model.</p>	<p>34. Agreed. CPRA has reached a consensus with the Commission that CPRA should move towards the investigative model.</p>	<p>CPRA and the Police Commission.</p>	<p>Completed.</p>



5	<p>As it considers changes to the City Charter and the Municipal Code, the City Council should:</p> <p>35. Consider the following questions in regard to the Commission's authority to fire the Chief of Police:</p> <ul style="list-style-type: none">• Who should be vested with the authority to fire the Chief of Police for cause?• Who should be vested with the authority to fire the Chief of Police without cause?• What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police are fair to all concerned and do not pose significant liability issues for the City? <p>36. Debate the pros and cons of the various methods used to select Commissioners.</p> <p>37. Consider revising the City Charter to allow the City Council to review and approve Commissioners individually, instead of a slate of candidates.</p> <p>38. Consider amending the requirements for selection panel members to eliminate potential conflicts of interest and the</p>		See Rebuttal	
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	<p>Municipal Code should be amended to eliminate the provision that exempted members who were previously grandfathered onto the selection panel.</p> <p>39. Develop language in the proposed ballot measure to prohibit the Commission from participating in administrative activities and directing staff.</p> <p>40. Develop clarifying language, if needed, in the proposed ballot measure to clearly identify the Commission's authority and responsibilities.</p> <p>41. Reassess the Commission's requirements from the City Charter and the Municipal Code to determine whether a Commission comprised of part-time volunteers can effectively address those requirements or whether the City Council should eliminate requirements in the proposed City Charter amendment or in the Municipal Code.</p>			
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City Administration's Response

City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
To ensure new Commissioners and oversight bodies are prepared to assume their duties prior to being seated, the City Administration, with the assistance of the Commission, should:			
9. Establish a formal orientation program which includes the following: <ul style="list-style-type: none"> • Meetings with the local government manager and other Commissioners • Orientation notebook • Department presentations • Organizational/departmental videos 	<u>Agreement</u> Staff will work with the Mayor's Office in developing a formal orientation program.	City Administrator's Office in conjunction with the Mayor's Office.	June 2021
The orientation program should also cover issues relevant to Commissioners such as: <ul style="list-style-type: none"> • Legal requirements and conflicts of interest • Expectations regarding ethical conduct • Provisions regarding sunshine laws or open meeting laws • City norms, policies, procedures, and by-laws • Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order) • Commissioners' roles regarding its own committees and serving on other boards and committees • Media relations (including social media) • Contact and Communication with staff 	<u>Agreement</u> This will require coordination with the Mayor's Office, City Attorney's Office, Public Ethics staff and board liaisons to complete the Auditor's recommendations in developing a training program for all board/commission members.	City Administrator's Office in conjunction with the Mayor's Office, City Attorney's Office, Public Ethics Commission, board/comission liaisons.	June 2021

City Administration's responses to: MATRIX - Performance Audit of Police Commission and CPRA

City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.	<p><u>Agreement</u></p> <p>The City currently assigns a staff liaison to each of the boards and commissions; however, a formalized program with regular or annual meetings may be required.</p>	City Administrator's Office in conjunction with the Mayor's Office.	June 2021
To improve the working relationship between the City Administration and the Police Commission, the City Administration and the Commission should:			
10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.	<p><u>Agreement</u></p> <p>The Administration will invite the Chair and Vice Chair of the Commission to schedule regular meetings with the City Administrator and liaison to the Police Commission.</p>	City Administrator's Office in conjunction with the Chair and Vice Chair of the Commission.	July 2020 target date to schedule next meeting.

City Administration's responses to: MATRIX - Performance Audit of Police Commission and CPRA

City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
To address situations when Commissioners contact City staff directly, the City Administration should:			
16. Develop the following protocols: <ul style="list-style-type: none"> • Guidance reminding staff to not respond to Commissioners without authorization and for notifying department officials of when Commissioners contact staff directly • Guidance addressing situations when Commissioners contact staff directly • Guidance elevating the matter to the Commission, the City Council, or to the City Attorney 	<u>Agreement</u> Staff in the City Administrator's Office will develop an Administrative Instruction following the recommendations by the City Auditor's Office.	City Administrator's Office.	June 2021
To ensure compliance with the Municipal Code requirement regarding the Agency's office location, the City Administration and the Agency should:			
17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.	<u>Agreement</u> City Administration recognizes this recommendation and is working to address space issues for the entire organization in the Civic Center.	City Administrator's Office and Public Works Department.	To be determined. Completion will depend on available funding and physical space as staff works to address relocating departments to maximize usage of the Civic Center complex.

City Auditor's Response to the Police Commission's Response

To provide clarity and perspective, we are responding to the Oakland Police Commission's (Commission) rebuttal to the Office of the City Auditor's (Office) report. First, we would like to point out we strongly disagree with the tone and the misleading or inaccurate statements in the Commission's response. The misleading and inaccurate statements are addressed in our response below. We also would like to point out that the Office made a few clarifying changes to the report, in response to the Commission's comments, and in a few instances, we provide more context on the Commission's performance. These changes are described below.

Before we address the Commission's response, we would like to emphasize several key points. First, the audit was conducted in full compliance with Generally Accepted Government Auditing Standards (GAGAS), including rigorously gathering and reviewing evidence to support all the audit report's findings and conclusions. Additionally, the Office follows a laborious internal report review process to ensure the evidence obtained supports the audit's findings and conclusions before the report is publicly released.

Secondly, the Office's vetting of the audit report's findings was extensive. In late February to early April, we held meetings to go over the audit findings with the Commission, the Agency, the City Administrator's Office, the City Attorney's Office, and the Oakland Police Department. With the Commissioners, the Office held four separate meetings, totaling approximately 15 hours to obtain their input on the report. As a result of these meetings, we made significant modifications to the report and issued three separate draft reports. On April 24, 2020, the Office transmitted the final confidential draft report to the Commissioners and requested a written response to the final draft report, *The Oakland Police Commission and Community Police Review Agency Performance Audit*. On April 27, the Office extended an offer to the Chair of the Commission to meet later in the week to discuss the report again. The Chair of the Commission, however, did not take advantage of this opportunity to discuss the report further.

The purpose of discussing the above process is to highlight that the Commission was given ample opportunity to raise concerns about issues raised in the audit and to provide documentation to support any suggested changes to the report.

Below are the Office's comments on the issues raised in the Commission's response. The numbers below correspond with the numbers in the margin of the Commission's response.

1. In its response, the Commission states, "the Commission has exercised its authorities in a manner that the Auditor fails to fully analyze."

The Commission's comment "the Commission has also exercised its authorities in a manner that the Auditor fails to fully analyze" is not a surprise and we discussed the Commission's authority in depth during our briefings with Commissioners and again at the exit conference. After the initial briefings with the Commissioners, we took great care to correct the report where necessary. We also provided the City Attorney with the draft report to ensure the audit report accurately reflects the Commission's authority per the City Charter and the Municipal Code.

2. In its response, the Commission states, "The Auditor's criticisms fail to account for the full span of the Commission's work or the full scope of the Commission's authority."

In order to accomplish the objectives of the mandated audit, as defined in Measure LL, the Office of the City Auditor executed a comprehensive audit plan to determine whether the Commission has provided effective oversight of the Oakland Police Department and the Agency and whether both the Commission and the Agency complied with the requirements of the City Charter and the Oakland Municipal Code Sections 2.45 and 2.46. To assess compliance, the Office of the City Auditor, evaluated the Commission's work performance against specific requirements in the City Charter and the Oakland Municipal Code Sections 2.45 and 2.46, for an audit period no later than two (2) years after City Council has confirmed the first set of Commissioners and Alternates, as required by the City Charter. As noted above, we also consulted with the City Attorney to accurately reflect the Commission's authority per the City Charter and the Municipal Code.

3. The Commission's response states, "The Auditor makes misleading statements about the Commission's policymaking track record, while mischaracterizing or flatly omitting most of the Commission's work that falls flatly within its policymaking authority."

We disagree with this comment. The report is clear on the policymaking work that the Commission has accomplished. The Commission's work resulted in two policy changes in its first two years of existence and added another in January 2020. At the same time, it did not implement a number of requirements specified in the Charter and the Municipal

Code. We have added a paragraph on page 19 of the report to recognize the work the Commission initiated in 2019 related to a major revision of OPD's use of force policy in 2020.

4. The Commission's response states, "The audit report blatantly mischaracterizes the Commission's removal authority. The Commission's response also criticizes the report's language that the Commission's removal authority is rare but acknowledges that San Francisco, Los Angeles, and Honolulu each grant their police commission's exclusive removal authority. Furthermore, the Commission's response states, on page 14, the audit report falsely states, On February 20, 2020, the Police Commission fired the Chief of Police without cause, with the approval of the Mayor. The Chief was jointly removed by the Police Commission and the Mayor, in conformance with the Charter."

We disagree with most of the Commission's comments on this issue. The Commission's authority to remove the Chief of Police is rare amongst other police oversight bodies. An official from the National Association of Civilian Oversight of Law Enforcement (NACOLE) confirmed to us that the authority to remove the Chief of Police is rare amongst civilian oversight bodies. Additionally, we provided information on several police oversight bodies that do have the authority to remove the Chief of Police. These include San Francisco, Los Angeles, and Honolulu. In these other jurisdictions, however, the Police Chief reports directly to the civilian oversight body, unlike Oakland, where the Chief of Police has a multiple-reporting relationship.

In regards to the comment that the audit report falsely states that the Commission fired the Chief of Police without cause, with the approval of the Mayor. We have changed the report to state "On February 20, 2020, the Commission, acting jointly with the Mayor, fired the Chief of Police without cause."

5. The Commission's response states, "The audit report fails to credit the Commission for partnering with community-focused non-profits. Instead, the report dismisses each partnership as an alleged violation of contracting rules on Page 25—staking out a position that contradicts the Office of the City Attorney's training and presentation materials."

The Commission's comments on this matter miss the point. We are not questioning the Commission's contracting authority that was granted the Commission. The audit report pointed out that the Commission has involved itself in administrative activities. That is, it solicited bids on three separate contracts. As the report pointed out, the Commission

should not be directly procuring or soliciting bids for contracts. Government procurement activities must adhere to strict federal, state, and local regulations. Splitting responsibilities for preparing and awarding or authorizing procurement contracts is to ensure effective checks and balances in the procurement process to prevent errors, conflict of interest or fraud and corruption.

6. The report criticizes the Commission for the steps it has taken to determine if there is enough evidence to re-open an investigation (the Bey case).

In the report, we did question the Commission's decision to spend \$50,000 to re-open this investigation and we still continue to question the Commission's decision on this matter. Specifically, we stated, "It is a questionable use of City monies and time to review a matter that occurred 15 years ago and has been appropriately adjudicated. It is not clear what benefit the City will derive from this investigation and it could set a precedent for other complaints to be re-opened." The Commission addressed this issue after the plaintiffs raised this matter in open forum at numerous Commission meetings. The Commission put the plaintiffs' complaint on at least 12 Commission meeting agendas.

7. The Commission's response states, "The audit report misrepresents the Commission's effort to address the missing persons case of then-19-year old Oakland resident, Jonathan Bandabaila. The Commission repeatedly took issue with the Department's failure to utilize its social media in the weeks and months following the disappearance of Jonathan to properly seek his return, while the Department reportedly used its social media accounts to seek the return of someone else's missing pet. In October of 2019, the Commission agendized a discussion on "department policy on social media for missing and abducted persons." At that meeting, one of the Commissioners, Commissioner Harris, briefed the Commission and the public on the Department's General Orders regarding Missing Persons and Abducted Persons and sought input from the Department to better understand the Department's interpretation of its own policy. The Auditor states on Page 29: Although this was an unfortunate circumstance, the Commission's involvement in this matter is not consistent with the Commission's role as established in the City Charter and the Municipal Code. To the contrary, Section 604(b)(6) grants the Commission authority to review and comment on all policies. Relatedly, OPD's manual of rules in force and effect during the first two years of the Commission's tenure places a standalone duty on the Chief and her designees to update the Department's General Orders and Policies. Yet the nuances of this dynamic –

exchanges on policies between two entities responsible for changing them – fail to surface in the audit report.”

The Commission’s involvement in this matter is not entirely consistent with the Commission’s role as established in the City Charter and the Municipal Code. A more appropriate action for the Commission to have taken would have been to review OPD’s missing person’s policy, not the specifics of the Bandabaila case, and direct the family to work with the City Administration or direct the Police Department to report back to the Commission on how the City was addressing this missing person’s case. The Commission’s response states they were engaged in a policy discussion on the department policy on social media for missing and abducted persons at the Commission’s October 2019 meeting. We found there was very limited discussion on the general missing and abducted persons OPD policy, instead, it was used to ask specific questions about the Bandabaila case, and the social media policy was barely mentioned at the meeting, even though that was the item on the agenda for the meeting.

As we state in the report, the Commission certainly can and should ask OPD how it is addressing this missing person case, this is a heartbreaking loss for this family and our community, however, once the Commission started directing OPD staff to attend meetings, and Commissioners attended meetings, the Commission directly involved itself in OPD’s handling of the case.

Section 604(b)(6) grants the Commission the authority to review and comment on all policies. The City Charter Section 604 (b)(6) does not however, grant the Commission the authority to review the handling of a specific case. The Office consulted with the City Attorney’s office in clarifying the Commission’s authority granted under section 604(b)(6).

8. On page 3 of its response, the Commission’s response states, “The Commission’s efforts to draft and propose new policies is similarly discredited, again without basis.”

This response mischaracterizes the report’s statements. On pages 17 and 18 of the report, we described the policy changes the Commission approved and on page 19, we described the challenges associated with the policy review process. Specifically, the report states, “It should be noted that the policy review and approval process can be very time consuming because the process often requires OPD to meet and confer with the Oakland Police Officer’s Association, as well as consulting with the City Attorney’s

Office and sometimes the federal monitor and the community to obtain input. In addition, the Commission must discuss and make all policy decisions in a public meeting to be in compliance with the Brown Act.”

9. The Commission’s response criticizes the report for not providing information on its efforts to reform OPD’s use of force policies.

We have added a sentence on page 18 and a paragraph on page 19 of the report to recognize the work the Commission initiated in 2019 related to a major revision of OPD’s use of force policy in 2020.

10. The Commission’s response criticizes the report for including an example from the Ontario Human Rights Commission. Specifically, the Commission’s response states, “The Ontario Human Rights Commission is not the Ontario Police Commission, and it has no experience with the Oakland Police Department, not to mention its limited insight into the legal frameworks required by constitutional policing in American cities like Oakland. The Oakland Police Commission’s views on racial profiling are and properly remain specific to the City of Oakland, to Oakland’s history, and to Oakland Police Department.”

The Commission’s response completely misses the point raised on page 45 of the report. The Ontario Human Rights Commission (OHRC) established principles for addressing racial profiling in law enforcement. The significance of this example is that it provides a process for more systematically addressing racial profiling in law enforcement rather than using a case-by-case approach as noted in the audit report. Most notably, the OHRC’s approach relies on policy guidance, data collection, and monitoring and accountability to create organizational change.

11. The Commission’s response refers to the audit recommendations as requirements and is vague as to whether it intends to address them. First, our recommendations are not requirements but recommendations that provide a roadmap to improve its performance. The Commission needs to implement these recommendations to increase its effectiveness in overseeing OPD and the Agency and to fully comply with the City Charter and Municipal Code. The audit recommendations are comprehensive in nature and address the areas the Commission needs to focus on to be more effective and to comply with the City Charter and Municipal Code. In order to achieve compliance, the Commission must first establish an accountable and effective organizational structure capable of managing the Commission’s day-to-day responsibilities, meeting the requirements of a public body transacting the people’s business in the public, and

meeting its larger City Charter and Municipal Code mandates effectively and timely. The audit clearly outlines recommendations to meet this end.

The Office of the City Auditor is the independent oversight function of the City, as such, auditees are responsible for implementing audit recommendations, and the City Auditor performs follow-up audits to determine if recommendations have been implemented. Unfortunately, the Commission fails to understand the authority of the Office of the City Auditor and has lost sight that Measure LL requires a performance and financial audit to directly inform the residents of Oakland and the City's leadership of the current performance of the Commission and CPRA, no later than two (2) years after City Council has confirmed the first set of Commissioners and Alternates. Regardless, we expect the Commission to provide a completed recommendation matrix to the City Auditor's Office no later than 45 days after the report issuance. The matrix will be published on the City Auditor's website with the complete audit report.

12. The Commission's response states, "The Auditor incorrectly alleges that the Chair of the Commission 'directed' OPD to write a report on (a complaint) to be presented at a later Commission meeting."

We have corrected the report to reflect that the Commission "requested" OPD to write a report. The issue raised in this example on page 43 of the report is that the Commission could make better use of its limited time and resources. As noted in the report, a night club owner complained at a Commission meeting. Based on the night club owner's complaint, the Commission discussed this issue for 16 minutes at a Commission meeting and then requested OPD to write a report on this matter. We concluded that a more appropriate discussion would have been to engage OPD on the policies around the permitting of night clubs in the City. When we discussed this matter with the Commissioners during our initial audit briefings, they informed us they felt this was an instance of racial profiling, and therefore it was appropriate for them to allocate more time to this issue. However, as the report notes, the item was not agendaized, therefore the discussion was a Brown Act violation. Moreover, the Commission and the public would be better served by systematically addressing racial profiling in law enforcement in Oakland, rather than using a case-by-case approach.

13. The Commission's response states that it did not direct an OPD manager to attend a Commission meeting even though the Manager had planned to be on vacation. The Commission's response states, "The Commission first submitted a request for information in May 2019. After reiterating the request for six months, the Commission

agendized the issue on October 10, 2019. On October 7, 2019, the Director in question insisted that the Commission should again delay the item by two weeks, as she had pre-scheduled a vacation. The Commission preceded with the agenda item but expressly did not require the OPD Manager to attend.”

The Commission’s comment is misleading and does not provide the full details of this matter. The meeting was originally planned for October 24, 2019, but the Commission changed the meeting date to October 10, 2019, the week before the meeting date. Since the OPD Manager was presenting the report to the Commission, placing this item on the agenda the week before the meeting, effectively forced the OPD Manager to cancel her vacation plans to attend the meeting. This example also highlights the haphazard manner in which the Commission places items on the agenda as stated on page 34 of the report. This item should have been scheduled several months in advance, instead of a week before the meeting.

14. The Commission’s response disputes the report’s claim that the Commission fails to structure its agendas to address its core functions.

As noted on page 34, “The Commission’s agenda setting process is haphazard. Frequently, the Commission puts together the next meetings agendas at the Commission’s meetings.”

15. The Commission’s response again criticizes the report comment, “The Commission’s authority to remove the Chief of Police is rare.”

As stated in the audit report and Note 5 above, the Police Commission’s authority to remove the Chief of Police is rare amongst other police oversight bodies. An official from the National Association of Civilian Oversight of Law Enforcement (NACOLE) confirmed to us that it is rare amongst civilian oversight bodies. Additionally, we provided information on several police oversight bodies that do have the authority to remove the Chief of Police. These include San Francisco, Los Angeles, and Honolulu. In these other jurisdictions, however, the Police Chief reports directly to the civilian oversight body, unlike Oakland, where the Chief of Police has a multiple-reporting relationship.

16. The Commission’s response states, “the Commission exercises its purchasing authority in compliance with City policies.”

The Commission's comments on this matter miss the point. We are not questioning the Commission's contracting authority granted to the Police Commission. The audit report pointed out that the Commission has involved itself in administrative activities. That is, it solicited bids on three separate contracts. As the report pointed out, the Commission should not be *directly* procuring or soliciting bids for contracts. Government procurement activities must adhere to strict federal, state, and local regulations. Splitting responsibilities for preparing and awarding or authorizing procurement contracts is to ensure effective checks and balances in the procurement process to prevent errors, conflict of interest or fraud and corruption.

17. The Commission states, "the audit report mischaracterizes the Commission's subpoena to CPRA regarding its review of the officer-involved shooting of Joshua Pawlik."

We disagree that we mischaracterized the Commission's subpoena of CPRA records. The report stated, "The Police Commission then subpoenaed documentation between IAD and the Agency with the purpose to investigate the Agency's handling of their investigations. The Commission does not have the authority to investigate the Agency's and the IAD's handling of their investigations. The Commission's role, as described in the City Charter, is to determine discipline when IAD and the Agency disagree on findings and/or proposed discipline."

18. In its response, the Commission notes it, "has completed a number of trainings that are falsely reflected as not completed on Page 12 of the audit report, even though the Commission provided a correct, updated list of completed trainings to the audit team."

As stated in the audit report, the Commissioners have not satisfied training requirements specified in the City Charter and the Municipal Code. Specifically, through December 31, 2019, none of the Commissioners completed 10 of 27 required training sessions. Furthermore, all Commissioners completed only 3 of 27 required training sessions. Also, the Chair of the Commission did not provide us an updated list of completed trainings to the audit team. The Chair of the Commission provided us with list of trainings that were not offered until 2020, not a list of trainings completed. We acknowledged that fact on page 22 as follows: "Commissioners reported that other trainings were not made available to them until 2020. These trainings include the City Civil Service Board and the California Meyers-Milias Brown Act and the Public Administration of the Act."

19. The Commission is disputing our statement in the report that, “the Commission has refused to allow the City Attorney to sit in on closed session because of the lack of trust.”

The Commission did prohibit the former outside counsel hired by the City Attorney from attending a closed session. At the end of 2019, the Commission hired its own legal counsel. On page 26 of the report we stated, “The Commission hired its own legal counsel at the end of 2019, who attends closed sessions and reports pertinent information to the City Attorney.” On page 32 of the report, we also noted the following: “The Commission hired their own legal counsel in 2019, who now attends closed sessions and reports pertinent information to the City Attorney. This has improved the relationship between the Commission and the City Attorney”.

20. The Commission’s comment seems to indicate that the Commission addressed the City Charter requirement to review the Mayor’s proposed budget to determine whether budgetary allocations for the Department are aligned with the Department’s policies, procedures, customs, and General Orders.

We disagree. The report states in Finding 1, “The Commission has not reviewed and analyzed the Mayor’s proposed budget to determine whether the budget is aligned with OPD’s policies, procedures, customs, and general orders. On page 26 of the report, we noted the Commission received a briefing on OPD’s budget and asked questions during this presentation. The Commission, however, did not provide an opinion as to whether the budget was aligned with OPD’s policies, procedures, customs and general orders.” Furthermore, the Commission’s comments that the budget “is not transformative” does not provide sufficient direction to better align OPD’s budget allocations with specific policies, procedures, customs, and General Orders. Moreover, we have not received any evidence that the Commission provided any recommendations to the City Council to better align OPD’s budget allocations with Department policies procedures, customs, and General Orders as the City Charter requires.

21. The Commission is disputing our statement that it did not meet at least twice per year outside City Hall as the Municipal Code requires.

We disagree with the Commission’s contention that they satisfied this requirement. On page 27, the report states, “The offsite meetings are to be designated as special meetings subject to the 10-day agenda notice requirement for purposes of Article II of

Chapter 2.20 of the Oakland Municipal Code and include an agenda entitled 'Community Roundtable'." In 2018 and 2019, the Commission convened only one meeting each year outside City Hall that met the requirements specified in the Municipal Code. In 2019, a community group convened a special meeting, in which the Commissioners attended, on the legal rights of residences when dealing with police and on OPD's practices of policing the homeless community. However, this meeting did not meet the requirements of the City Charter and the Municipal Code."

22. Although the Commission seems to acknowledge that it can improve control over speaker time, it states that it has controlled its agendas quite well.

We disagree. As noted on page 34, "The Commission's agenda setting process is haphazard. Frequently, the Commission puts together the next meetings agendas at the Commission's meetings."

23. The City Charter requires the Commission to request an annual report from the Chief of Police and semi-annual reports from the City Attorney. In its response, the Commission reported that it has sent out requests for these reports.

We have not received any documentation from the Commission that it has formally requested these reports. As a point of clarification, the City Charter specifically requires the Commission to not only request an annual report from the Chief of Police, but to notify the Chief regarding what information will be required in the Chief's annual report to the Commission. We have not received evidence that the Commission provided the Chief of Police with clear direction on the information to be included in the annual report.