



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

AUDIT RECOMMENDATIONS

NOTE: RECOMMENDATIONS DIRECTED TO THE POLICE COMMISSION ARE UNDER FINDINGS 1 AND 2

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 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.
 - 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
 - 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.

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

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.
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

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

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.
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.

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

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.
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.

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 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.

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.