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OAKLAND

CITY OF OAKLAND

AGENDA REPORT

2010 SEP 30 PM 6:13
To: Office of the City Administrator
Attn: Dan Lindheim
From: Police Department
Date: October 12, 2010

Re: **An Informational Report from the Oakland Police Department on the Status of the City's Efforts to Continue to Implement Police Practices Consistent with Law Enforcement Industry Standards, as Required by the Honorable Judge Thelton Henderson in the Case of *Delphine Allen, et al. v. City of Oakland, et al.***

SUMMARY

This report briefly summarizes the reform measures implemented by the Oakland Police Department since last reported on April 27, 2010, and addresses the Department's continued efforts toward achieving compliance with the provisions of OPD's policies and procedures. More specifically, this report details the results of the new monitor's first and second quarterly reports and the two Case Management Conferences (CMC) with Federal Judge Thelton E. Henderson, and outlines the steps OPD has taken toward achieving full compliance.

FISCAL IMPACT

The cost of implementing the reforms agreed upon by the City may be broken into multiple categories. One part of the cost reflects NSA work, while another part includes work related to separate improvements instituted by the Department and work required by state and federal requirements. Both short and long term cost savings to the City must also be considered as it relates to the Department's continued implementation of improved police practices. The increased efficiencies and transparency brought by the NSA to the Department has previously helped to decrease law suits and, provides improved inoculation against those that do occur. The NSA has also help establish some of the most promising practices in law enforcement, aiding the Department in its efforts at early identification of problems. The practices brought on by the NSA help to increase citizen trust, which contributes to increased efficiency in departmental operations through community policing.

To date, the estimated cost of instituting contemporary and effective police practices and risk management protocols continues to be comprised of the following expenses:

- Staffing the Office of Inspector General;
- Labor-intensive auditing work;
- Policy development and updating;
- Training personnel;
- Continued improvement of the internal investigative process for use of force and police misconduct; and

- Maintenance and continued development of an “early warning system” for detecting problematic trends in police work and assessing the need for intervention and assistance and outside monitoring fees.

Additionally, on December 8, 2009 the City Council approved up to \$1,500,000 (Resolution No. 82448 C.M.S.) for monitoring services during the two-year term of the MOU. On July 6, 2010, the City Council approved up to \$100,320 (Resolution No. 82856 C.M.S.) for additional technical assistance from the Police Performance Solutions, LLC, Independent Monitoring Team.

BACKGROUND

Since January 22, 2003, the City and the Department have worked to implement the reforms outlined in the NSA. These reforms resulted from a civil lawsuit (*Delphine Allen, et al., v. City of Oakland et al.*). The goal of the NSA reforms is to transform the Department into a model agency with contemporary and effective police practices. The NSA is intended to support the Department in its efforts to improve relations with the Oakland community, and has improved the Department’s operations in the areas of supervision, accountability, training, use of force, risk management and internal investigations.

After seven years, the Department was able to show full implementation of more than half of the contemporary practices required by the NSA before the expiration of the NSA on January 22, 2010. Subsequently, the Court ordered the parties to complete the work not completed in the remaining 22 tasks and the parties entered into an MOU for a period not to exceed two years. The MOU superseded the NSA.

The MOU includes the 22 tasks not completed under the NSA which remain active to monitoring. The remaining 29 tasks of the NSA are inactive to monitoring, but may become active again if the Monitor observes any material non-compliance. Thus, the City and Department are still obligated to reach and maintain full compliance with all objectives of the NSA.

The previous Independent Monitoring Team (IMT) chose not to continue its monitoring efforts with the MOU. The City subsequently hired Robert Warshaw of Police Performance Solutions, LLC (PPS/IMT), to take over monitoring responsibilities.

KEY ISSUES AND IMPACTS

The City is currently in the two-year period agreed upon in the MOU, which resulted from the termination of the NSA. However, The City is still obligated to reach and maintain compliance with all its policies and procedures which were the objective of the NSA; any back-sliding in our policy compliance obligations may result in additional work becoming actively monitored. Under the court order, the Department is required to show continued compliance with our policies for a one-year period.

The PPS/IMT conducted its first quarterly site visit February 8-12, 2010, and issued its First Quarterly Report on April 22, 2010. The second quarterly site visit took place May 23-28, 2010, and the Second Quarterly Report was issued on August 5, 2010. The Team conducted its third quarterly site visit in August 2010, and the Department is awaiting the Third Quarterly Report.

The PPS/IMT looked at the reforms more broadly, versus completing each subtask, as a way to help the Department achieve effective, just, and high-quality policing. During its first quarterly assessment of the 22 active tasks, the PPS/IMT found the Department in full compliance with 10 tasks, partial compliance with six, non-compliance with five and one task was deferred due to no new data. The Team also identified several issues critical to the Department's efforts in implementing the reforms, as listed below:

- The Department needs to move away from doing what is needed for the sake of meeting NSA compliance requirements towards incorporating what is needed for the Department's own investment in quality policing.
- There are critical data management issues throughout the Department; databases that are fundamental to the Department's management and record-keeping are (in several cases) maintained by one or two dedicated and knowledgeable individuals. There are few or no contingencies for addressing data issues that may arise should those individuals not be available. The Department needs to institutionalize the management of these systems.
- The Department's approach to data management also means (in some cases) that data is not regularly cleaned, reviewed, or tested for errors and thereby may be unreliable.
- Requirements concerning the Department's collection of "stop" data are a critical component of the NSA; however, there is no adequate protocol for its collection and evaluation, which nearly nullifies its value to the Department and the City of Oakland at large.
- Although California Police Officer Standards and Training (POST) requirements may be met, the Department relies heavily on roll-call and on-line training, which is not evaluated and may provide inadequate exposure to complex issues and insufficient preparation for increasing contributions or advancement in the Department.
- The Department's reviews of misconduct complaints and use of force investigations suggest that the NSA compliance process may have resulted in heightened concerns over relatively minor matters, which are then extensively documented. At the same time, investigations of incidents that justify more extensive investigations sometimes lack sufficient detail. The Department needs to reconsider these priorities in light of sound policing principles and not simply compliance-driven reporting practices.

During its Second Quarter Report, the PPS/IMT found the Department in full compliance with 11 tasks, partial compliance with seven, non-compliance with three and one task was deferred. However, while two tasks moved into compliance, two tasks moved from in-compliance to partial compliance. The Monitor expressed concern that progress was limited between the first and second reports, and also identified problems related to attention to detail, thoroughness of commander reviews, and continued issues with technology. Finally, while recognizing the importance of the Department's budgetary issues, the Team does not want to see this limit efforts in moving forward with compliance.

Since the PPS/IMT took over monitoring of the MOU, the City has appeared before Judge Thelton E. Henderson in Federal Court for two Case Management Conferences (May 4 and September 16, 2010.) At both conferences, Judge Henderson, while acknowledging the progress that has been made under Chief Batts, made it clear that there will be consequences if he does not see compliance gains during the Third and Fourth Quarter Reports. He stated that promises of compliance were not enough, but actual achievements were necessary. He also made it clear that if the Department does not reach full compliance by the end of 2010, there is no way to meet the one-year substantial compliance requirement by the end of the MOU. As a result, he may consider further Court oversight after the MOU expires. In addition, the Court stated it will consider instituting contempt proceedings and/or the imposition of a Special Master or a Receivership if the City is unable to show progress in the upcoming months.

As referenced in his August 31, 2010 Court Order and reaffirmed by his statements at the September 16th CMC, Judge Henderson will be holding the executive leadership of the Department accountable for failures to make real sustainable change. His recent Court Order requires the Department to assign each MOU task to an executive commander and produce weekly reports for the Monitor on the status of compliance efforts with each MOU task.

On July 10, 2010, the Department entered into a Technical Assistance Contract with the PPS/IMT. The Monitor has met with the Department on several occasions to offer guidance on best practices related to MOU tasks. As a result, the Department has made a number of adjustments to staffing and practices.

The PPS/IMT is focused on leadership and lasting cultural change. The transition between the old IMT and the new Team has been an adjustment, and has required the Department to look at policies and practices with a more global perspective. The Department has a renewed focus, under Chief Batts' leadership and the guidance of the new Monitor, and is making significant changes to achieve the goals of the Agreement.

PROJECT DESCRIPTION

The MOU includes 22 actively monitored tasks. As reported in the PPS/IMT's Second Quarter Report, the Department has been deemed in full practice compliance with 11 tasks.

- Task 2 (Timeliness Standards and Compliance with IAD Investigations)
- Task 4 (Complaint Control System for IAD and Informal Complaint Resolution Process)
- Task 6 (Refusal to Accept or Refer Citizen Complaints)
- Task 7 (Methods for Receiving Citizen Complaints)
- Task 16 (Supporting IAD Process – Supervisor/Managerial Accountability)
- Task 18 (Approval of Field – Arrest by Supervisor)
- Task 35 (Use of Force – Witness Identification)
- Task 37 (Internal Investigations – Retaliation Against Witnesses)
- Task 40 (Personnel Assessment System PAS – Purpose)
- Task 43 (Academy and In-Service Training)
- Task 45 (Consistency of Discipline)

The Department is in partial actual practice compliance with 7 tasks.

- Task 3 (IAD Integrity Tests)
- Task 5 (Complaint Procedures for IAD)
- Task 20 (Span of Control)
- Task 24 (Use of Force Reporting Policy)
- Task 25 (Use of Force Investigations and Report Responsibility)
- Task 26 (Use of force Review Board – UFRB)
- Task 30 (Firearms Discharge Board of Review)

Three tasks are not yet in practice compliance.

- Task 33 (Reporting Misconduct)
- Task 34 (Vehicle Stops, Field Investigation and Detentions)
- Task 41 (Use of Personnel Assessment System PAS)

Task 42 (Field Training Program) has been deferred because there have been no new trainees.

Table 1: Actual Practice Compliance

Compliance Status	Number of Tasks
Full Compliance	11
Partial Compliance	7
Not in Compliance	3
Deferred	1

Pursuant to Judge Henderson's August 31, 2010 Court Order, compliance responsibilities have been assigned as follows:

- Internal Affairs Division, Training, and Discipline - Assistant Chief Howard Jordan
- Use of Force and Supervisory Control - Deputy Chief Eric Breshears
- Stop Data and the Personnel Assessment System - Deputy Chief Jeffrey Israel

The Assistant Chief and Deputy Chiefs began providing weekly written reports to the PPS/IMT on the compliance status of their respective tasks on September 27, 2010.

Since the last status report to the Public Safety Committee in April 2010, the Department has taken many steps to ensure compliance with the MOU tasks.

Internal Affairs/Training/Discipline

- The Department has increased the frequency with which it conducts integrity tests.
- Additional training has been provided to supervisors on conducting internal affairs investigations.
- Additional review of internal affairs cases has been implemented as a quality control measure.
- The Department has revised the discipline policy to reflect the Chief's discipline philosophy and to provide for increased accountability within the chain of command.

Use of Force and Supervisory Control

- Commanders in the Bureau of Field Operations are more proactively auditing documents to ensure compliance with arrest approval and use of force timelines; actions are taken when failures have been identified.
- In order to ensure better supervision in Patrol, more sergeants are being transferred to patrol.

Stop Data and the Personnel Assessment System

- Better technology has greatly improved the "Stop Data" process. Stop data is being entered directly into the Field Based Reporting system, increasing the accuracy and tracking of the data. New software has allowed the Department to begin performing analysis on stop data.
- The Department has increased staffing in the Personnel Assessment System (PAS) Unit. This will ensure that more staff is available to facilitate PAS functions, rather than relying on one or two individuals.
- The Department has made PAS more robust by requiring additional monitoring by command staff and instituting weekly meetings with the Chief and captains to hold captains accountable for ensuring at-risk behavior is being addressed.

The Office of Inspector General (OIG) continues to conduct audits and reviews to ensure compliance with OPD's policies and procedures, focusing on both areas that are actively monitored and areas that are inactive. In addition, OIG works with the PPS/IMT to identify any issues that affect compliance findings. The Department has continued to build its internal auditing capabilities in an effort to identify problem areas early and implement proactive solutions. These efforts, however, will require a sustained commitment of resources to ensure full compliance.

The Department continues its efforts to embed the improvements realized from the NSA into the culture of the Department by shifting to a focus on policy compliance, thereby ensuring compliance efforts extend well beyond the term of the NSA and MOU.

SUSTAINABLE OPPORTUNITIES

Economic: Effective implementation of the provisions of the MOU will help reduce or prevent litigation incidents in the areas of use of force, civil rights, conduct, and other activities that expose the City to liability costs and judgment payouts. Large payouts result in less than favorable media portrayals of the City, elicit adverse public reactions, and have a negative impact on the City's economy. Also, contemporary police practices protect the safety of officers by providing more supervision in the field, result in less injuries to officers, and culminate in better police training, policies, and practices overall.

Environmental: No environmental opportunities are contained in this report.

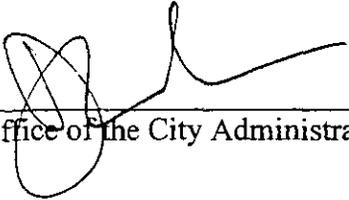
Social Equity: The purpose of the MOU is to promote police integrity and prevent conduct that deprives persons of the rights, privileges, and immunities secured or protected by the Constitution or laws of the United States.

The overall objective of the MOU is to provide expeditious implementation of the best available practices and procedures for police management, which will enhance the ability of the Department to protect the lives, rights, dignity, and property of the community it serves. Areas of focus include supervision, training, and accountability.

RECOMMENDATION

Staff recommends acceptance of this informational report.

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Respectfully submitted,



Anthony W. Batts
Chief of Police

Prepared by:
Captain Benson H. Fairrow
And
Ms. Sylvia McDaniel
Office office of Inspector General
Office of Chief of Police

PUBLIC SAFETY CMTE.