

**CITY OF OAKLAND**  
*AGENDA REPORT*

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OAKLAND

2004 FEB 11 PM 1:23

**TO:** Office of the City Manager  
**ATTN:** Deborah Edgerly  
**FROM:** Oakland Police Department  
**DATE:** February 24, 2004

**RE: An Information Report from the Police Chief on Recent Changes to the Oakland Police Department's Crowd Control Procedures and Outcomes of the December 11, 2003 Citizens' Police Review Board (CPRB) Policy Hearing on Police Crowd Control Policies**

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**SUMMARY**

This report responds to the Public Safety Committee's request for a status report on recent changes to the Police Department's crowd control procedures, as announced by the Chief of Police on December 11, 2003, and the recommendations from the December 11, 2003 Citizens' Police Review Board (CPRB) hearing on police crowd control policy.

**FISCAL IMPACT**

This is an information report. No fiscal impacts are included.

**BACKGROUND**

- March 20, 2003, Thursday, President George W. Bush announced the commencement of war against Iraq
- April 7, 2003, Monday, Oakland Police responded to an anti-war demonstration at the shipping docks of the Port of Oakland.
- April 29, 2003, Tuesday, a Special Public Safety Committee meeting held a public hearing regarding the Oakland Police response to the April 7, 2003 protest at the Port of Oakland. That evening the Council voted 7:1 (De La Fuente – No) in Closed Session to hire an independent panel to investigate the police actions of April 7, 2003.
- May 12, 2003, Monday, anti-war protesters again shut down two terminals at the Port of Oakland. There were no reported incidents.
- June 3, 2003, Tuesday, City Attorney John Russo announced the establishment of an independent, three member panel to investigate the incidents surrounding the Port protest (City Council Agenda Item No. 24). The panelists: LaDoris Hazzard Cordell, Dale Minami, and Brian Jordan. The panel was tasked with interviewing "participants in the

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Port protest as well as members of the Oakland Police Department who participated in the response, and they will hold a public meeting to solicit further input.” The panel was expected to issue a final report to the Council in September 2003.

- June 17, 2003, Tuesday, City Attorney Russo announced the addition of two more panelists to the independent investigation (City Council Agenda Item No. 28). The panelists: Alice A. Lytle and Jerome A. Smith.
- Mid-August 2003, it was announced that due to time constraints and the filing of numerous federal lawsuits against the City of Oakland by protestors injured during the April 7, 2003 Port incident, the independent review panel had been dissolved.
- December 11, 2003, Thursday, Police Chief Richard L. Word announced changes to the Police Department’s crowd control procedures.
- December 11, 2003, Thursday, the Citizens’ Police Review Board conducted a policy hearing on the Police Department’s crowd control policies.

## **KEY ISSUES AND IMPACTS**

### ***Police Department Crowd Control Procedural Changes***

On December 11, 2003, in advance of his participation as the Oakland Police Department (OPD) representative at the Citizens’ Police Review Board policy hearing on the Police Department’s crowd control policies and procedures, Police Chief Richard Word issued a media advisory to announce some initial changes to OPD’s crowd control procedures. The changes noted were:

- Establish police protest liaisons
- Number police officer helmets for identification purposes
- Eliminate the use of wooden dowels
- Suspend use of the motorcycle B.U.M.P. (Basic Utilization of Motorcycle Push) technique
- Restrict the use of flexible baton (bean bag) rounds
- Train all officers on the new crowd control policy

A copy of the media advisory is included as Attachment A.

### ***Citizens’ Police Review Board Policy Hearing***

On December 11, 2003 at 6:30 pm, the Citizens’ Police Review Board held a policy hearing on the Oakland Police Department crowd control policies. The agenda for the meeting was:

- D. Policy Hearing on Oakland Police Department Crowd Control Policies
1. Introduction and Report Summary 6:30-6:45  
CPRB Staff
  2. Demonstrators' Testimony 6:46-7:30  
(Representatives chosen by PUEBLO, Copwatch, ACLU)
  3. OPD Crowd Control Policy 7:30-8:00  
Chief Word
  4. Expert Testimony 8:00-9:00  
Jerry Harper
  5. Break 9:00-9:15
  6. Legal Issues in Crowd Control Policies 9:15-9:30  
Tony Lawson, Board Counsel
  7. Public Comment 9:30-10:30
  8. Break 10:30-10:45
  9. Board Deliberates and Makes Recommendations 10:45-11:30

The Board had available for its review a packet of information covering various aspects of the incident, background information, interview summaries, current policies and procedures, and other guidelines and opinions. The attached copy (Attachment B) of the CPRB packet Table of Contents lists each document contained in their agenda packets.

At the conclusion of the policy hearing, the Board held its deliberations and made the following recommendations:

1. The elimination of the wooden dowels
2. Eliminate the sting grenade
3. More feedback from Chief Word
4. Executive Director Joyce Hicks to work with Chief Word and the community on a process to develop a working committee. A motion was made by Chairperson Mario Andrews and seconded by Commissioner Loveday. The vote was unanimous.

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The minutes from the December 11<sup>th</sup> meeting are included as Attachment C.

***Current Status***

The Department has implemented the CPRB's recommendation to eliminate use of stinger grenades and will codify its use of Police Department liaison officers to work with individual protest organizations in advance of planned demonstrations to ensure the safety, security and rights of all concerned are maintained.

On January 28, 2004, Chief Word and Police staff met with the plaintiff attorneys and Mr. Greg Fox, the City's outside counsel for the Port protest matter. Prior to the meeting, staff received a copy of the plaintiff's proposal for a new crowd control policy. This proposal was placed side-by-side with OPD's current policies. There were many areas of agreement and some areas where opinions differed, which provides a good basis for continued discussion. The group is scheduled to meet again in March.

The Chief of Police and Ms. Joyce Hicks, Executive Director, Citizens' Police Review Board, in keeping with CPRB recommendation number four, will facilitate a community meeting in order to receive citizen comments on the draft revisions to the crowd control policy document, prior to its submission to the City Council.

**SUSTAINABLE OPPORTUNITIES**

**Economic**

A crowd control policy based on best practices will provide an effective management strategy to reduce or prevent the City's exposure to incidents of civil liability and litigation.

**Environmental**

No environmental opportunities are contained in this report.

**Social Equity**

The goal of the Department's crowd control policy is to ensure officer actions and conduct, when dealing with any large group, are professional and legal, and protect a person's right to assemble, while maintaining overall safety for the community - - protecting the rights of all.

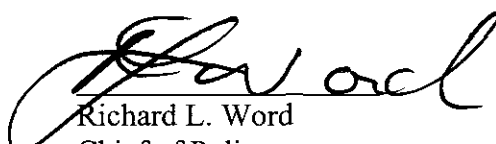
## DISABILITY AND SENIOR CITIZEN ACCESS

There are no disability or senior citizen access issues contained in this report.

## RECOMMENDATION

Staff recommends acceptance of this information report on changes to OPD's crowd control procedures and the recommendations from the CPRB's policy discussion on OPD crowd control policies.

Respectfully submitted,




Richard L. Word  
Chief of Police

Prepared by: W.R. Uber, Management Assistant  
Admin & Tech Services Division  
Bureau of Services

Attachments: (A) OPD Press Release  
(B) CPRB Agenda Packet Table of Contents  
(C) Minutes from the December 11, 2003 meeting of the CPRB

APPROVED FOR FORWARDING TO  
THE PUBLIC SAFETY COMMITTEE:

  
Office of the City Manager

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Oakland Police Department

Richard L. Word  
Chief of Police

For Additional Information:  
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**MEDIA ADVISORY**  
**For Immediate Release**

## **Oakland Police Chief Richard Word to Announce Changes to Police Department's Crowd Control Policy at Citizen's Police Review Board Hearing**

(Oakland, CA) On Thursday, December 11, 2003 at 6:15 PM, Oakland Police Chief Richard Word will announce changes to the Oakland Police Department's Crowd Control Policy at the Citizen's Police Review Board Hearing. The Hearing will take place at the Oakland City Hall City Council Chambers. Following the April 7<sup>th</sup> anti-war demonstration at the Port of Oakland, the Chief of Police convened an internal review board to examine every facet of their response including: prior communications and planning with protest leaders, crowd control training, equipment and use of force options. The review board also included non-police participants.

"We have learned many lessons in light of the April 7<sup>th</sup> anti-war demonstration at the Port of Oakland," says Oakland Police Chief Richard Word. "We will do everything we can to communicate with protest leaders and other representatives of protest organizations prior to planned, future protests in the City of Oakland. The value of having protest liaisons from the Oakland Police Department and prior communication with protest leaders was proven at the subsequent Port protest on May 12<sup>th</sup>."

Changes to the Oakland Police Department Crowd Control Policy include but are not limited to:

- The establishment of police protest liaisons, trained by practiced protestors, to be on-site during the protest to meet with protest leaders and advise of an intended police action or to relay any police requests.
- The numbering of police officer helmets in an effort to easily identify officers involved in any police action.
- The elimination of the wooden dowel from the Oakland Police Department arsenal.
- The suspension of the motorcycle B.U.M.P. (Basic Utilization of Motorcycle Push) technique.
- Restricting the use of flexible baton (bean bag) rounds.
- All officers will be trained on the new crowd control policy.

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**CITIZENS' POLICE REVIEW BOARD**  
**MEETING OF THURSDAY, December 11, 2003 – 6:15 P.M.**  
**City Hall, City Council Chambers**

I. CALL TO ORDER BY CHAIRPERSON Andrews AT 6: 20 P.M.

II. ROLL CALL AND ATTENDANCE

Present: Chairperson Mario Andrews  
Commissioner William Hubartt  
Commissioner Susan Raffanti  
Commissioner Anthony Loveday  
Commissioner Mansour Salahu-Din  
Commissioner Beneba Thomas  
  
Tony Lawson, Hearing Officer / Board's Counsel

Joyce M. Hicks, CPRB Executive Director  
Sean Quinlan, CPRB Investigator  
Victoria Urbi, CPRB Investigator  
Audrey Montana, CPRB Investigator  
Wendy Jan, Policy Analyst  
Delores Pontiflet, Executive Assistant (Note Taker)

Excused: Vice Chairperson Roland Walker and Commissioners Batarse and Cheung

III. AGENDA DISCUSSION

None

IV. NEW BUSINESS

A. 1. Case proposed for administrative closure/failure to cooperate with CPRB investigative process and Government Code § 3304 date has run. Case N0. 02-52, Martha Ibarra

Commissioner Loveday moved and Commissioner Salahu-Din seconded the motion to close the case. Claimant not present; Board voted unanimously 6-0 to close case **02-52. Motion carried.**

2. Case proposed for administrative closure/failure to cooperate with CPRB investigative process and Government Code § 3304 date has run. Case No.02-070, Michael Sachs.

Commissioner Loveday moved and Commissioner Raffanti seconded the motion to close the case. Claimant not present; Board voted unanimously 6-0 to close case **02-070. Motion carried.**

B. 1. Case proposed for administrative closure/Government code § 3304 date has run. Case No. 02-55, Jay Rejkumer

Commissioner Raffanti moved and Commissioner Loveday seconded the motion to close the case. Claimant not present; Board voted unanimously 6-0 to close case **02-55. Motion carried.**

2. Case proposed for administrative closure/Government Code § 3304 date has run. Case No. 02-59, Willie Walker.

Commissioner Loveday moved and Commissioner Salahu-Din seconded the motion to close the case. Claimant not present; Board voted unanimously 6-0 to close case **02-55. Motion carried.**

3. Case proposed for administrative closure/Government Code § 3304 date has run. Case No. 02-056, Flenoid McCleary.

Commissioner Hubartt moved and Commissioner Loveday seconded the motion to close the case. Claimant not present; Board voted unanimously 6-0 to close case **02-056. Motion carried.**

C. Case proposed for administrative closure/Unavailability of complainant Case No. 02-58, Kenneth Tims.

Commissioner Loveday moved and Commissioner Raffanti seconded the motion to close the case. Claimant not present; Board voted unanimously 6-0 to close case **02-58. Motion carried.**

#### **D. POLICY HEARING ON OAKLAND POLICE DEPARTMENT CROWD CONTROL POLICIES**

Introduction and Report Summary (CPRB Staff) Executive Director Joyce Hicks announced that the purpose of tonight's hearing was for the Board to hear testimony to enable it to make recommendations on OPD's Crowd Control policies in light of an April 7, 2003 anti-war

demonstration where OPD officers used less than lethal weapons and demonstrators were injured.

Complaint Investigator Victoria Urbi, gave a summary of the events that took place at the anti war demonstration held on April 7, 2003 at the Port of Oakland.

Policy Analyst Wendy Jan provided an informational chart that showed policies from six cities. The Cities were Oakland, Denver, Miami, Portland, San Francisco and Seattle.

#### Demonstrators' Testimony

Viewing of video provided by PUEBLO and speaker Susan Quinlan from Direct Action to Stop War that showed what took place at the Anti War demonstration at the Port of Oakland on April 7, 2003. Ms. Quinlan informed the Board that this was not the only time these techniques were used. Ms Quinlan further stated that this was a premeditated, preplanned attack and that the Oakland Police were geared for contact at a non-violent demonstration.

Jim Chanin, National Lawyers Guild ACLU informed the Board that the weapons that were used were not- less than lethal weapons and are used in prison riots. The bullets are deadly and guards are told to shoot on the ground. Mr. Chanin further stated that the citizens of Oakland need to have input in the policy.

Billy Keepo, Long Shoreman informed the Board that he was shot in the thumb on his way to work. Mr. Keepo also thanked the Board for bringing this issue forward.

Jessica Lawrence, informed the Board that the CPRB report was incomplete. Items were not discussed and police testimony was unchallenged.

Scott Fleming, informed the Board that he was shot five times in his back at the demonstration. Mr. Fleming also stated that the police showed up in riot gear. Mr. Fleming further stated that whatever weapons are in the police departments arsenal from batons, tear gas to weapons must be subject to rules governing their use.

Malaika Parker from Bay Area Police Watch informed the Board that this was not an isolated incident. Ms. Parker further stated that it is important to discuss how the policy would be implemented. Ms. Parker also suggested that police officers receive training.

Jack Heyman, ILWU informed the Board that nine members were shot during the demonstration and that the Board needs to discuss police control not crowd control. Mr. Heyman further stated that he was pulled from his car and thrown down on the ground and arrested.

OPD Crowd Control Policy – Chief Word announced that the OPD Review Board which consisted of himself, Deputy Chief Dunbar and other command officers, Executive Director Joyce Hicks of the Citizens’ Police Review Board and Mr. Donlink chair of the City’s Community Policing Advisory Board met on several occasions reviewed video footage. The goal was to review policy, practices, training and equipment and then make recommendations. The recommendations are as follows:

1. Conduct communications with organizations to build a rapport establish ground rules and have points of contact.
2. Establish protest liaisons
3. Give clear dispersal orders several times
4. Strictly restrict the use of flexible baton, (bean bag) rounds.
5. Ease use of the wooden dowels
6. Eliminate the motorcycle B.U.M.P. technique
7. Make sure there are evidence boxes
8. Use video operators
9. Number helmets to identify officers
10. Trained officers in crowd control

Chief Word further stated the policy needs to be flexible and that the goal is to never see what happened on April 7, 2003 happen again.

Jerry Harper, former Director of the California Youth Authority gave expert testimony on crowd control. Mr. Harper informed the Board that 98 – 99% of crowd gatherings are peaceful demonstrations. Mr. Harper also stated that the goal of the police and the City have to be the same as to preserve the constitution right of people to assemble. Mr. Harper further stated that police have the obligation to keep the peace. Mr. Harper described best practices of crowd control:

- 1) There has to be a strong emphasis on prevention in the community with police and the City such as community based policing.
- 2) Establish a partnership and communication with the community
- 3) Leadership is critical, there must be ongoing dialogue
- 4) Planning and updating information
- 5) Some plans require information – intelligence gathering, there must be guidelines particularly for preplanned events
- 6) Training – training starts with leadership in the City. The first to be trained should be the Mayor, City Council, Police Chief and his higher up executives. The police officers must be trained a couple times a year, special units also must be trained for preplanned and spontaneous events

- 7) You get what you inspect not what you expect from a risk management point of view.
- 8) Use of Force – Police should be held accountable
- 9) Mobile Field Force is a force that is specially trained to handle any situation rather how passive or excessive
- 10) The most effective crowd control is a skirmish line with arrests.

Mr. Harper also spoke on less lethal weapons and stated that less lethal weapons are appropriate in many cases. He further stated that less lethal weapons are needed so as not to use lethal weapons another option short of having to shoot people – to fill a gap of lethal force or no force at all. Mr. Harper discussed how the police need a full range of options and that the policy should be sound and flexible.

Mr. Harper also discussed dispersal orders – the need, was the order clear, was the order repeated more than once, is there proof that the order could be heard. Mr. Harper stated that considerations must be observed as to the noise level and to give the people time to obey the orders.

After hearing expert testimony from Jerry Harper the Board took a short break at 8:50 pm and reconvened at 9:10 pm

Legal Issues in Crowd Control Polices – Tony Lawson, Board Counsel gave a summary of the legal standard of when force should be used by a police officer. Mr. Lawson discussed the Supreme Court case *Graham vs. Conner* regarding the use of force established a law in 1989. Mr. Lawson introduced factors of when force should be used:

- 1) Nature of less lethal weapons used and the result of injury
- 2) Government's interest at stake
- 3) Nature and quality of protestors
- 4) Whether protestors posed a threat to the police or to the public
- 5) Whether officers gave a warning before the use of force
- 6) Whether there was an immediate need to use force

Mr. Lawson further stated that this was a two - prong incident

- 1) Should force have been used and was the force appropriate
- 2) Was the type of force reasonable

Mr. Lawson agreed with Mr. Harper that the key is training and when and what kind of force should be used.

The Board heard public comments from several citizens who were injured and or attended the April 7, 2003 anti war demonstration.

At 10:25 the Board took a short break and reconvened at 10:45 p.m.

At 10:45 the Board deliberated and to made recommendations.

#### ANNOUNCEMENT OF BOARD'S RECOMMENDATIONS

- 1) The elimination of the wooden dowels
- 2) Eliminate the sting grenade
- 3) More feedback from Chief Word
- 4) Executive Director Joyce Hicks to work with Chief Word and the community on a process to develop a working committee. A motion was made by Chairperson Mario Andrews and seconded by Commissioner Loveday. The vote was unanimous

#### V. OPEN FORUM

Rashida Grinage, Pueblo asked the Board what are the guiding principles and that the need is to work from the inside out and not the outside in and when is a crowd when does it become a problem and she would like to see a vision or a mission statement

Susan Quinlan, informed the Board that she was looking for enforceability, it doesn't work if the police to monitors itself. Ms Quinlan further stated that the enforcement should come through the judicial system.

Judy Haney, informed the Board that it is critical that any investigation begin at the higher level and it has to be independent.

#### VI. ADJOURNMENT

The Board adjourned at 11:25 p.m.

NOTE: Meetings of the Citizens' Police Review Board are accessible. Individual requesting alternate format materials and/or auxiliary aids and services must do so no later than five working days before the scheduled meeting date, otherwise it may not be possible to arrange a specific accommodation. Such requests should be addressed to the Citizens' Police Review Board, One Frank H. Ogawa Plaza, 11th Floor, Oakland, CA 94612, or by telephone by calling (510) 348-3159. **Because some persons are sensitive to certain chemical, persons attending this meeting are requested to refrain from wearing scented products.** TTY (238-2007).