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CITY OF OAKLAND

AGENDA REPORT

TO: HONORABLE CITY COUNCIL

FROM: Deanna J. Santana

SUBJECT: Transfer of OIG and Complaint Intake
to the City Administrator's Office

DATE: March 28, 2013

RECOMMENDATION

Accept this informational report on the status of Council's direction to transfer the Office of Inspector General (OIG) and Internal Affairs' Complaint Intake Functions from the Oakland Police Department (OPD) to the City Administrator's Office (CAO).

OUTCOME

Council and public will receive a report on the level of effort and current status of implementing the City Council's direction with respect to the transfer the Office of Inspector General (OIG) and Internal Affairs' Complaint Intake Functions from the Oakland Police Department (OPD) to the City Administrator's Office (CAO).

BACKGROUND

Over the past years, the Mayor and City Council have considered various organizational changes that are targeted to result in structural changes that sustain compliance with the Negotiated Settlement Agreement (NSA) and improve quality control measures. Two key functions have been identified during this two year budget (FYs 2011-2013) that meets this goal: (1) Transfer of the Internal Affairs Complaint Intake functions from OPD to the CAO, and (2) Transfer of the OIG from OPD to the CAO.

This report outlines in the Analysis Section the actions taken by the City Council to fund these activities and by staff to accomplish these directives. It is worth noting early in this report that there have been delays that are directly related to staff shortages, competing workload priorities, and significant change of events related to the NSA structure of obtaining approvals (or consultation).

ANALYSIS

Budget Actions to Establish Reorganizations

For FYs 2011-2012 and 2012-2013, the City Council resolved shortfalls amounting to \$58,000,000 and \$76,000,000, respectively. The City Council established a balanced budget by reducing services, eliminating positions (195 FTEs), and issuing directives that required implementation and some potential restructuring. Additionally, the City Council took action in late-June 2011 to fund the second year (FY 2012-2013) the staff positions required to transfer the Complaint Intake functions from OPD to the CAO. As part of this action, there was no action taken with respect to the OIG transfer. Although funding was allocated for complaint intake, that action was subject to the standard "meet and confer" process with the Oakland Police Officers' Association (OPOA) and IFPTE Local 21. Specifically, for FY 2012-2013, the following staff were approved for the transfer of the Complaint Intake function from OPD to CAO:

Table 1: June 2011, Authorized Civilian Staffing Level for Complaint Intake

Staff Classification/# of FTEs	Appropriation
Misc Payroll Adjustments	\$1,468,158
TOTAL	\$1,468,158

**See narrative regarding appropriation reduction in January 2012. Since there was no specific classifications established for this function at the time the FY 2012-13 budget was adopted, the funding was placed on the Miscellaneous Payroll Adjustment account until the classifications could be established and approved by the Civil Service Board.*

In December 2011, shortly after the FY 2011-13 budget approval, the California Supreme Court took action to dissolve the former Redevelopment Agency which created a \$28,000,000 shortfall resulting from the Court action and the elimination of an additional 74 FTEs. This came directly on the heels of the City Council balancing the FY 2011-2012 and 2012-2013 operating budgets, which contained shortfalls of \$58,000,000 and \$76,000,000, respectively. Concurrently, during this time, staff was charged with simultaneously dissolving the redevelopment agency, establishing the successor agencies for housing and redevelopment and reporting accordingly to the state, and balancing the budget to address yet another shortfall in the amount of \$28,000,000. The California Supreme Court required adherence to the Order by February 1, 2012.

The proposed balanced Operating Budgets for FYs 2011-2012 and 2012-2013, included significant service reductions and/or reorganizations of City services. The reorganization efforts were significant for the City and, at that time, I requested that a Program Manager III be added to lead the various reorganization efforts and implement Council directives. During that same budget balancing effort, the City Administrator's Office was focused on absorbing workload from our own office budget reductions in key operational areas, such as:

- Staffing reductions for the Citizens Police Review Board;
- Staffing reductions in KTOP;
- Elimination of Agenda Management Manager;

- Elimination of staffing in Equal Opportunity program;
- Elimination of Contract Compliance staffing;
- Elimination of front-desk Reception staff; and,
- Reduction of Oaklander's Assistant Center.

The request for a Program Manager III to lead the reorganizational efforts was denied by the City Council and the City Administrator's Office was tasked to implement the rebalanced budget within its reduced staffing levels, absorb sustainment of the Successor Agency duties and reporting requirements; and, reorganize the organization to achieve the assumed savings. At the same time, the Community and Economic Development and Finance and Management Director positions were eliminated and duties were absorbed by the Assistant City Administrators and the Employee Relations Director absorbed the duties of the former Equal Opportunities Program functions. Accordingly, the City Administrator's Office appropriately prioritized implementation of the balanced budget by focusing on the services areas that required the Administration to achieve the prorated \$28,000,000 savings in the current FY.

As the CAO focused its implementation on areas required to achieve the assumed savings (\$28,000,000) to stabilize the City's fiscal condition, we also set up the appropriate systems to adhere to new state laws impacting the dissolution of redevelopment. Under this framework, and in part due to the Court action to dissolve the Redevelopment Agency and balance the budget that contained a \$28,000,000 shortfall, the City Council approved the delay in implementation of the transfer of Complaint Intake from OPD to CAO and, accordingly, reduced the appropriated funding in half (from approximately \$1,400,000 to \$700,000) and delayed this transfer to January 2013. This authorized delay allowed for staff to work citywide on other competing priorities and, at that time, I reiterated the need to pace the organization during this unprecedented set of events.

Later in June 2012, as part of the proposed FY 2012-2013 Mid-Cycle budget, the Administration proposed the transfer of OPD's OIG to the CAO and it was approved by the City Council. This was an initiative that had been discussed with the Federal Monitor and OPD by Mayor Quan and directly related to advancing best/contemporary policing practice. The City Council approved funding for this effort which was to also begin in January 2013. At the time that the Council approved this initiative, it was communicated in staff reports that this was also subject to the required "meet and confer" process. Through a Supplemental Memos issued as part of the mid-year budget cycle, the City Administration provided preliminary concepts to advance both of the above initiatives (e.g., preliminary organization charts, specific responses to Council questions, etc.) [See Proposed Midcycle Policy Budget for FY 2012-2013 on City's website]. Specifically, for FY 2012-2013, the following staff were approved for the transfer of the OIG function from OPD to CAO for six months only:

Table 2: June 2012, Authorized Civilian Staffing Level for OIG

Staff Classification/# of FTEs	Appropriation
Performance Audit Manager (1 FTE)	\$106,586
Performance Auditor (2 FTEs)	\$131,039
TOTAL	\$237,625

Key Milestones to Implement Reorganization and Status

From July through November 2012, staff continued to implement various reorganizations, Council directives, dissolution of redevelopment tasks, and prepare for the Federal Court filing relative to the NSA due November 2013. The team assembled to work on this reorganization was Police Chief Howard Jordan, Employee Relations Director LaWanna Preston, and myself. Additional assistance was provided by Mayor's Senior Policy Analyst Reygan Harmon and CPRB Policy Analyst Patrick Caceres, but these staff were redirected to other pressing tasks such as acting Project Manager for Operation Ceasefire (Ms. Harmon) and Measure Y Committee, Vicious Dog Hearings, and other CPRB related tasks associated with Mr. Caceres work portfolio.

In order to implement the above two reorganizations, the following set of broad actions were required:

- (1) Obtain Legal Opinion to clarify whether "Meet and Confer" was required based on a previous settlement agreement relative to the Citizens' Police Review Board;
- (2) Consult with the Federal Monitor per the January 2012 Federal Court Order which includes the requirement to consult on issues regarding policies, personnel decisions, procurements, and operations (OIG and Complaint Intake functions fall under policies, personnel decisions, and operations part of the Order);
- (3) Meet and Confer with the OPOA regarding the transfer of these two functions;
- (4) Develop Transition Plan and close Meet and Confer with the bargaining groups
- (5) Establish proper job Classifications based on defined work duties and organizational charts;
- (6) Meet and Confer with Local 21 regarding these new classifications and seek approval by the Civil Service Board and City Council to establish these classifications;
- (7) Recruit for these positions; and,
- (8) Implement work plan upon recruitment.

While it is recognized that there are other details associated with the transfer, the above represent key milestones that are required to bring this reorganization to completion. Based on the above, these actions fall predominantly to OPD, CAO, Employee Relations and Human Resources and specifically the staff already mentioned as the core team. As I have stated during previous Council discussion, the workload impacts to the organization and staffing are worth noting and do delay the various Council directives that the organization receives at once; this in no way suggests that the Administration rejects the Council's authority, it does, however, illustrate that at times workload exceeds our capacity and that we must balance competing priorities.

With that in mind, it is worth noting the unprecedented assignments and competing priorities that each of our offices led during the July – December timeframe which directly relates to the a slower paced implementation:

- Significant effort toward the NSA Court filing and negotiations leading to the Federal Court Order authorizing the assignment of a Compliance Director;
- Continued implementation of the reorganization and stabilizing the organization;
- Development of the first formal Five Year Forecast;
- Continued dissolution of the Redevelopment Agency and support for the State Department of Finance and Controllers reviews;
- Developed and implemented Project Ceasefire;
- Unprecedented administration of three public safety academies, and the related department effort required, that garnered over 13,000 applications (two Police and one Fire) during a time when the City continued to receive applications for essential services resulting in the receipt of an additional 20,225 application;
- Completion of an unprecedented number of Internal Affairs investigations resulting from various protests experienced during October 2011 through May 2012 and compliance with associated strict Court Orders requiring the Chief of Police and City Administrator to review each, followed by the duties sustained by OPD and/or Employee Relations to administer Skelly Hearings;
- Increased need for Meet and Confer resulting from reorganizations and organization incidents; and,
- Basic day-to-day operations of other tasks that fall within our respective oversight.

While much of the work identified was not factored into the City's work plan and required resources beyond the normal course of business operations, we did manage to complete a significant amount of work on these reorganizations. Table 3 shows the level of completion and/or special notes associated with each of the key milestones:

Table 3: Status of Completion of Milestones

Milestone	Notes	OIG Status	CI Status
Consult with the Federal Monitor	Ongoing conversations by the Mayor, Chief and City Administrator on these transfers.	✓	✓
Obtain Legal Opinion to clarify whether "Meet and Confer" is required	Staff successfully worked with the City Attorney's Office to evaluate and complete the work necessary to obtain a legal opinion to clarify whether "Meet and Confer" was required based on a previous settlement agreement relative to the Citizens' Police Review Board. Based on this effort, it was determined that, indeed, meet and confer was required.	✓	✓
Meet and Confer with the OPOA	Staff and the OPOA did Meet and Confer on several occasions and has made more progress on the OIG reorganization than the Complaint Intake. The OPOA awaits one final meeting regarding the transition work plan of the OIG transfer. Complaint Intake requires more meet and confer between the City and OPOA.	✓	U
Develop Transition Plan	Staff has completed a draft transition work plan for OIG (and will initiate further discussions with bargaining groups), which awaits review and approval by the Compliance Director.	✓	U
Establish Proper Job Classifications	Staff has completed a job classification for the Inspector General which will be presented to the Civil Service Board on April 11. New Complaint Intake job classification specs require meet and confer and then presentation to the Civil Service Board for consideration. If the Compliance Director approves these reorganizations, the Complaint Intake job classifications will also be forwarded to the Council for final action.	✓	✓
Meet and Confer with Local 21 regarding new classifications	Upon approval by the CD to proceed, we will initiate meet and confer on the draft Complaint Intake job specs already developed. The IG is an exempt position that does not require meet and confer.	n/a	O
Seek approval by the Civil Service Board and City Council	IG is scheduled for the Civil Service Board on April 11. See note above re Complaint Intake job spec status.	✓	O
Obtain Compliance Director's Approval (per 12-12-12 Court Order)	See next Section of this report.	U	U
Recruit for Positions	Contingent on CD's approval	O	O
Implement work plan upon recruitment	Contingent on CD's approval	O	O

Note: n/a=Not Applicable, U=Underway, O=Outstanding, and ✓ = Completed.

As stated, OIG reorganization is further along than the Complaint Intake function and moving appropriately through the key milestones. The OIG function is less directly related to NSA task compliant and serves internally as an auditing function to ensure compliance with OPD policies and procedures that sustain the NSA.

The Complaint Intake function is directly related to NSA tasks in that it is the first step of allegations of police misconduct that requires Internal Affairs' due diligence, investigation, and resolution of whether a staff should be disciplined or not. According to the Police Department, the Complaint Intake function is directly related to the following NSA Tasks:

- 4 - Complaint Control System,
- 5 - Complaint Procedures,
- 7 - Methods for Receiving Complaints,
- 9 - Contact of Complainants,
- 10 - IAD Manual,
- 11 - Summary of Complaints Provided to OPD Personnel, and
- 14 - Lawsuits and Legal Claims.

Most recently, in the Federal Monitor's 12th Quarter Report and a result of extraordinary circumstances, the City fell out of compliance with the following NSA Tasks related directly to Internal Affairs:

- 2 - Timeliness of IA Cases,
- 16 - Supporting the IA Process, and
- 33 - Reporting Misconduct.

Federal Court Order re Compliance Director

As this work has progressed, in December 2012, the City was issued a Federal Court Order pertaining to the NSA and establishing a new work structure to advance compliance. The Federal Court Order, issued December 12, 2012, assigned various authorities to the Compliance Director that requires the City to seek approval for NSA and/or AMOU task or areas beyond specific NSA tasks. The Federal Court Order contains three key provisions which staff believes require the City to work with the Court assigned Compliance Director before action is taken to transfer these functions, provisions are noted below:

- B1 The requirement in the January 24, 2012 order for consultation with the Monitor will terminate upon appointment of the Compliance Director. However, Defendants will not implement any of the types of changes or actions identified in the January 24, 2012 order without the Compliance Directors direction or approval.

Comment: Generally, the January 24 Court Order included instructions regarding policies, personnel decisions, procurements, and operations. The OIG and Complaint Intake functions fall under policies, personnel decisions, and operations part of the Order.

C(f)(6) The Compliance Director will have the power to review, investigate, and take corrective action regarding OPD policies, procedures, and practices that are related to the objectives of the NSA and AMOU, even if such policies, procedures, or practices do not fall squarely within any specific NSA task.

Comment: OIG and Complaint Intake both fall under the policies, procedures and practices of the OPD and are directly related to the NSA and AMOU.

C(f)(7) The Compliance Director will have the authority to direct specific actions by the City or OPD to attain or improve compliance levels, or remedy compliance errors, regarding all portions of the NSA and AMOU, including but not limited to: ... (5) OPD programs or initiatives related to NSA tasks or objectives. The Compliance Director will have the authority to direct the City Administrator as it pertains to outstanding tasks and other issues related to compliance and the overall NSA and AMOU objectives.

Comment: OIG and Complaint Intake both are programs and/or initiatives directly related to the NSA tasks and objectives. The Compliance Director has the authority to direct the City Administrator accordingly with respect to these Council directive since they fall under the policies, procedures and practices of the OPD and are directly related to the NSA and AMOU.

The above provisions clearly establish the requirement to work with the Compliance Director and seek approval, particularly because these efforts are directly related to NSA tasks (e.g., Complaint Intake) and/or can adversely impact task compliance (e.g., OIG). It is particularly important because the 12th Quarter Report issued by Federal Monitor Warshaw found that the City has fallen out of compliance with respect to a task related to Internal Affairs, which is directly related to the high volume of investigations completed from the protests experienced from October 2011 through May 2012.

As of March 11, 2013, Mr. Tom Frazier has begun work as the Federal Compliance Director. He has already begun to set appointments with City officials and, as of the week of March 18, we have communicated with Mr. Frazier of our desire to brief him on this City Council direction and reorganization efforts. Upon his review, we seek his approval to continue this reorganization effort or will adjust accordingly to his Court Ordered authority. On March 26, Mr. Frazier communicated to the City that he believed that the review of these transfers required the participation of the Federal Monitor and, therefore, the discussion of this reorganization would be postponed until the Federal Monitor could participate in this review. Those briefings are in process of being scheduled in the near term and staff will be prepared to update verbally the status of these conversations if any occur before April 16th.

PUBLIC OUTREACH/INTEREST

These reorganizations have been discussed publicly as part of the City Council's budget development process. Additionally, staff has responded to several public records act requests relative to implementing these directives.

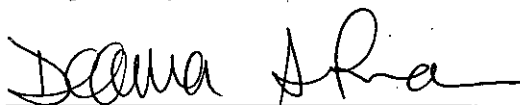
COORDINATION

This report was coordinated with the Employee Relations, OPD, and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Funding has already been appropriated to support these reorganizations. There is no fiscal action needed.

Respectfully submitted,



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Reviewed by:

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