

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

To: Office of the City Administrator
Attn: Dan Lindheim
From: Police Department
Date: September 23, 2008

2008 SEP 11 PM 3:07

Re: **An Informational Report from the Oakland Police Department on the Status of the City's Efforts to Institute New Police Practices Consistent with Law Enforcement Industry Standards and as Required by the Negotiated Settlement Agreement Which Resulted from the Case of *Delphine Allen, et al. v. City of Oakland, et al.***

This report summarizes the reform measures implemented by the Oakland Police Department (OPD) from October 1, 2007 through July 31, 2008, and addresses the Department's continued efforts toward achieving compliance with the provisions of the Negotiated Settlement Agreement (NSA).

FISCAL IMPACT

This is an informational report; therefore no Council action is required.

The cost to the City of implementing Police Department reforms 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. The cost also has to be considered in relation to cost savings, both short and long term, which have been and will continue to be realized by the City as it institutes improved police practices.

To date, the estimated total cost of instituting police reforms comprises the following expenses: fully staffing the Office of Inspector General; labor-intensive auditing work; additional policy review and drafting of new policies; training personnel; improving the internal investigative process for use of force and police misconduct; instituting an "early warning system" for detecting problematic trends in police work and assessing the need for intervention and assistance; and outside monitoring fees.

The estimated cost of the NSA for the final two years (January 21, 2008 to January 21, 2010) is approximately \$14,700,000 per year.

BACKGROUND

Since January 22, 2003, the City and the Department have worked to implement the reforms outlined in the NSA, which 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 superior police practices. The NSA is intended to support the Department in its

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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, and internal investigations.

KEY ISSUES AND IMPACTS

The City is currently in the two-year extension of the NSA and has reached an agreement with the IMT to extend its contract for monitoring the City's progress in achieving the NSA reforms to January of 2010. By January of 2010 the City must be able to show, based on the record and reliable evidence, that it has reached substantial compliance with the NSA reforms to avoid the imposition of sanctions, penalties, monitoring costs, and a further extension of the NSA.

On January 18, 2008, the City appeared in federal court for a Case Management Conference to update Judge Thelton E. Henderson on the status of the implementation of the NSA. During the conference, the Judge ordered the Plaintiff's Attorneys, the Independent Monitoring Team (IMT) Independent Assessment & Monitoring, LLP, and the City to reach agreement on the definition of "substantial compliance" and how the IMT will measure the Department's efforts to maintain compliance.

On March 31, 2008, an agreed-upon definition of substantial compliance was filed with the Court. The parties agreed that "OPD should be required to remain in 'substantial compliance' for a period of one year, from January 21, 2009, through January 21, 2010." The City and the Department must achieve compliance with all Tasks by the end of 2008 and then maintain substantial compliance for the final year of the NSA.

On May 22, 2008, the City again appeared in federal court for a Case Management Conference. Judge Henderson indicated that he was pleased with the Department's efforts, specifically the achievement of full policy and training compliance and the capacity building to ensure that reforms are sustainable beyond the Agreement. He was concerned, however, about the increased number of complaints in the Internal Affairs Division and urged the Department to employ well-reasoned strategies to adequately investigate all complaints.

The Department is at a critical point in the NSA: a high level of work is essential to reach substantial compliance in the next three months and maintain this level of contemporary police practices for the year of 2009. With the continued support of the City Council, the City Attorney's Office, the IMT, and the Plaintiff's counsel, and given the proper tools and resources the Department needs, staff is confident it can meet its obligations to achieving substantial compliance with the NSA..

PROJECT DESCRIPTION

The following represents major achievements of the Department in its reform efforts since the last status report.

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Improvements in Departmental Training

The NSA requires the Department to implement a plan to enhance its Academy and In-Service training to ensure that officers, supervisors, and commanders receive adequate and regular training. The training provided must include additional emphasis on ethics, professionalism, critical thinking, problem solving, conflict resolution, and relationships, as well as incorporate scenario-based exercises. In addition, Task 43 (Academy training Plan) requires the Department to evaluate the content and quality of training provided to OPD personnel, and track all training that occurs.

On April 16, 2008, the IMT finalized its audit of the Department's Training Program. The audit found "*excellent improvement*" in the Training Program and anticipated that the Department can reach full compliance with this task very soon. Despite the staffing challenges associated with training a large number of new police recruits and the POST (California Commission on Peace Officer Standards and Training) recertification process, the Department is implementing systems and programs to continue improving the Training Program and to address shortcomings identified by the IMT. Examples of these systems and programs are listed below.

- The Training Division is implementing a mentoring program to assist Police Officer Trainees with any issues that may arise during their training. An experienced former OPD sergeant (now an annuitant) meets regularly with the trainees to discuss issues that may impact their success in the academy. For example, it was recently discovered that a student was dyslexic. The student was put in contact with a veteran officer who is also dyslexic. Further, the report-writing instructor was informed and has met individually with the student to ensure his success despite the handicap.
- The 163rd Basic Academy graduated with an attrition rate of approximately 26% - a full 10% below the average OPD Basic Academy attrition rate. This improvement results from a combination of factors, which include the use of mentoring, a rigorous selection process, the use of rubrics in the training and testing of recruits, and the leadership of the Recruit Training Officers.
- The Training Division also increased its instruction in ethics during academy training. Throughout their time in the academy, Police Officer Trainees are presented scenarios calling for ethical law enforcement decision-making. The trainees are required to prepare a written memorandum that describes the incident and tells what the ethical issues are and how they would respond to the situation. These memorandums are then reviewed, responses are discussed, and the proper response is explained. Having a written response allows the Training staff to focus on how the trainees are learning to interpret and handle specific ethical dilemmas. It also provides an opportunity to more thoroughly educate officers on their responsibilities and the Department's expectations.

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- In January of 2008, the Training Division recognized the need to alter existing Continued Professional Training (CPT) schedules to ensure that all officers and sergeants receive their CPT at intervals of no greater than 24 months. As a result, the Training Division has implemented a new schedule that will enable the Department to comply with the NSA and POST requirements.
- The Training Division recently implemented an observation checklist to grade instructors and provide feedback regarding the quality of instruction. Training sergeants and the commander will aim to complete six instructor evaluations per week. The evaluations allow the Training Staff to identify instructors who are unprepared or who may be undermining OPD's efforts to improve ethics and professionalism, as well as to assess/document whether the instructor is supportive of the Department's philosophy and values.
- The Training Division recently hosted three Instructor Development Courses to ensure that all OPD instructors are properly trained to instruct.

The Training Division is committed to providing high-quality, professional, training to staff and ensuring that the instruction received is supportive of OPD's values, ethics, and philosophy.

Improvements in Documenting and Evaluating Use of Force Incidents

Three new Use of Force policies were published in February 2006:

- Department General Order (DGO) K-3 (*Use of Force*)
- DGO K-4 (*Reporting and Investigating Use of Force*)
- DGO K-4.1 (*Force Review Boards*)

The Department revised the use of force policies in August 2007. The new Use of Force policies require more complete and detailed investigations, and provide for increased accountability. Use of Force investigation packets now require more detailed information, resulting in more complete investigations. There is also a greater emphasis on identifying poor tactical decisions that occur during the course of Use of Force incidents.

IMT audits of Uses of Force during the last reporting period showed significant improvement in the way OPD reports and investigates Use of Force incidents. The audits found the Department in full compliance with Tasks 24 and 31 (Use of Force Reporting Policy and Officer Involved Shooting Investigation), which require that a supervisor be notified of Use of Force incidents and responds to the scene to conduct an investigation, that members report Use of Force properly and that proper coordination of interviews and notifications are made for lethal force incidents or incidents likely to result in serious injury. The IMT also found that the Department is nearly in full compliance with Task 26 (Use of Force Review Board), which requires that certain types of

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force be reviewed by a Force Review Board to determine if the Use of Force complied with Departmental policy.

The Department was found in partial compliance with Tasks 25 and 35 (Use of Force Investigation and Report Responsibilities and Use of Force-Witness Identification), which require that Use of Force reports be thorough. For example, the reports must: provide an analysis of the evidence; address any discrepancies in officer's statements; document witnesses to the Use of Force; and address whether the Use of Force was proportional to the resistance encountered by the subject. In addition, Use of Force reports must be reviewed by the chain of command and reviewers must make compliance recommendations. Although the Department did not meet all the requirements of Tasks 25 and 35, it has made significant improvements in the quality and completeness of Use of Force reports.

To ensure that the Department achieves full compliance with the Use of Force requirements, training is ongoing. The Department's Use of Force expert routinely works with sergeants, lieutenants and captains to reinforce the Use of Force policies. Also, officers involved in Use of Force incidents (and their sergeants) are required to appear before the Force Review Board and receive training when deficiencies are identified.

In addition, the Department has created a new position, Use of Force Coordinator. The officer who fills the position will be responsible for tracking Use of Force cases. The Department has struggled to meet Use of Force reporting timelines; the new coordinator will assist the Department in meeting these timelines.

Improvements in Investigating Police Misconduct Complaints and Accountability

The Internal Affairs Division (IAD) continues to be challenged by the high number of complaints and allegations it is required to investigate, and the high level of investigative work that must be devoted to each complaint. There has been an upsurge in the number of complaints received by OPD in 2008. This development, combined with the challenges faced with sustaining a high level of investigation in the thousands of complaints IAD receives, continues to cause concern.

IAD is staffed with 32 personnel, including 1 captain, 2 lieutenants, 13 sergeants, 12 officers, and 4 professional staff members. It has been projected that IAD will receive approximately 1,400 complaints per year. The first four months of 2008 have shown a 45% increase in the number of complaints accepted and a 48% increase in the number of allegations raised within those complaints (see Figure 1).

Given the increase in complaints and allegations and the requirement that IAD provide a significantly high level of investigation to all complaints, it is projected that IAD will continue to need significant number of staff as well as incur overtime costs, in order to meet expectations and maintain a high level of productivity consistent with OPD policies. In addition, the number of division-level investigations are increasing while at the same time the sergeants and

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commanders who investigate these cases are faced with numerous challenges and obligations, understaffing, and changes in their assignments and work hours.

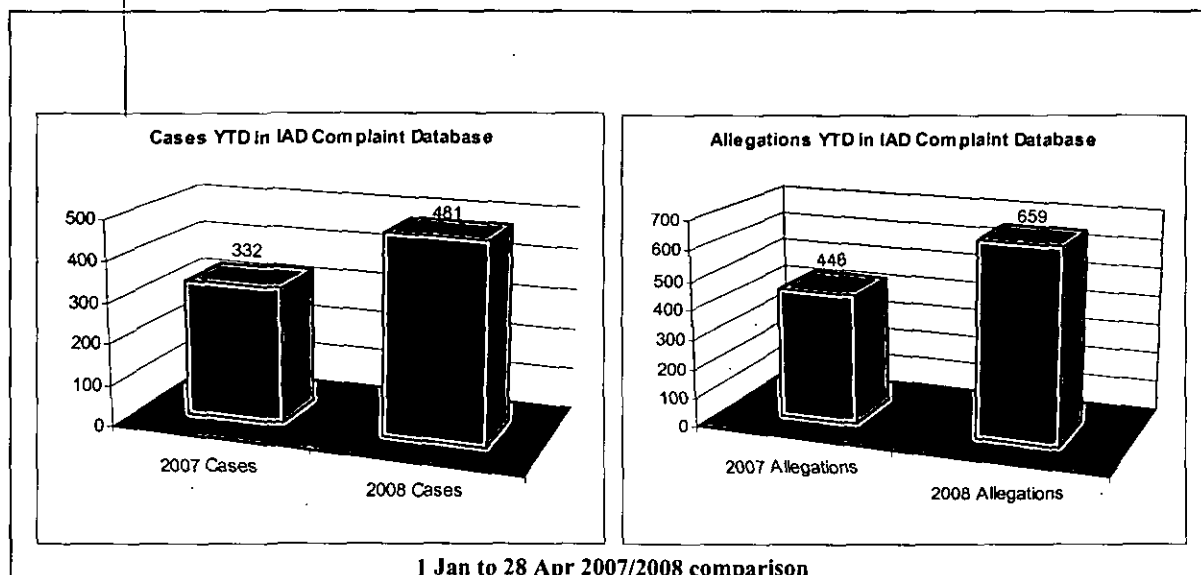


Figure 1. Comparison of first quarter 2007 to first quarter 2008. Total number of complaints and allegations have significantly increased.

Despite these serious challenges, IAD continues to maintain the quality required in the receipt, processing, and investigation of misconduct complaints internally, while helping the Department improve in the same areas outside the Division. The information below details current efforts in accomplishing this goal.

- Improvement continues in the Quality Assurance Program where the Investigations Section lieutenant and administrative sergeant provide valuable feedback to division level investigators, discuss on-going investigative needs and concerns in the form of face-to-face meetings, telephone calls, and email exchanges. Formal written feedback is provided by way of an investigative feedback form designed to help IAD staff identify where additional training or personalized attention is needed.
- The IAD Administration Section now provides investigative plans for all investigations being assigned at the division level. Each plan provides the division level investigator a template upon which to build his/her investigation. It is developed by the intake officer and further

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refined by the administration section commander to provide clear guidance to the investigator.

- IAD's participation in CPT for sergeants continues. Since the sergeant is most often the assigned investigator for division level investigations, proper training and updates are critical steps to ensure that these investigations meet the same high standards as investigations completed in IAD.
- Revisions have been completed for several policies that provide personnel in IAD and throughout the Department with guidance and direction during complaint investigations.
- The IAD training module has been completed and installed in the IAD database. This module allows training (provided as a result of findings from internal investigations) to be tracked and monitored.

IAD is confident that its policies and systems (based on IAD staff institutional knowledge and input from the IMT and the City Attorney's office) will continue to improve and adapt to the ever-changing law enforcement environment, well beyond the NSA deadline of 2010. While much of what IAD does on a daily basis is centered on compliance with the NSA, the division looks toward the future with an eye toward sustainability of best practices.

Improvements in Field Supervision and Accountability

In January 2008, the Department reorganized its patrol function to a geographic system of policing and began a new schedule (12 hour shifts) to improve consistency of staffing and continuity of supervision. Implementation of the reorganization was a monumental task.

The Department's reorganized patrol function makes both patrol and specialized units responsible to the assigned area captain. Under the new system, the Department has more stringent staffing requirements and has improved its documentation of daily staffing. The Department has also created a pool of certified acting sergeants to backfill positions for absent sergeants or during periods when promotions are not feasible.

In addition to the patrol function reorganization, the NSA span of control requirement (one field sergeant can only supervise a maximum of eight officers) has resulted in closer supervision. To prove compliance with span of control, documentation of staffing for every shift must be consistent and reliable. As a result, the Department is developing policies to ensure that daily details and special operations plans include the information necessary for officer safety and accountability, are reviewed for accuracy and approved by a commander, and are maintained in a consistent manner.

Geographic accountability and consistency of supervision are critical to both reducing crime and ensuring that NSA requirements are fulfilled. The reorganization complements and is consistent with the Department's goal of achieving substantial practice compliance in 2008.

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Improvements in Evaluating Personnel, Providing Intervention Services, and Saving Careers

The NSA requires the Department to develop and implement an early identification system and intervention program to identify sworn and professional employees who exhibit at-risk or substandard performance. The Personnel Assessment System (PAS) was launched on December 29, 2006, when Department General Order D-17, *PAS Purpose* was published. Part of the requirement for the system is a computerized database that gathers and consolidates performance information for each member and employee of the Department. As reported during the last NSA Compliance Status Report, the Police Department and the City's Department of Information Technology (DIT) developed and launched the Internal Personnel Assessment System (i-PAS). The i-PAS is the computerized component of PAS, which gathers information on an individual officer's or employee's activities from existing records, including data such as complaints, uses of force, arrests, awards, vehicle pursuits, and sick leave.

The i-PAS is an award-winning relational database that has been operational since January 2007 and serves as a model system to other law enforcement agencies. The San Francisco Police Department recently met with personnel from OPD and DIT to review the i-PAS and the PAS program as a whole.

The Department's Personnel Assessment System continues to function well in identifying employees in need of counseling, intervention, remedial help—or those whose performance is superior and therefore warrants recognition. The PAS program has enhanced OPD's ability to assess and evaluate its personnel, units, and sub-units. Supervisors, managers, and commanders have convenient access to their subordinates' performance information via i-PAS.

Since the publication of the PAS policy, i-PAS has generated four threshold lists. As a result, nine people are currently in active intervention and two people are in supervisory monitoring. Seven people have been recognized for exceptional performance. In other accomplishments, the six-month publication review/amendment of DGO D-17 (*Personnel Assessment System*) has been completed, and the revised general order and relation forms are currently being reviewed by the IMT.

Due to both technical and data-related deficiencies, the i-PAS SuperViewer (website accessible to supervisors, managers and commanders that displays employee data) was unavailable to OPD personnel from May 27 to July 16, 2008. Supervisors were redirected to the applicable Custodian of Records to obtain information concerning PAS-related data. The system is now back online.

The most significant challenge with i-PAS is that continued, dedicated DIT staff support is necessary to manage the system. The system requires regular maintenance; without appropriate technical resources, system failures may continue to occur and compromise the Department's ability to achieve substantial compliance.

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Improvements in Developing Self-Monitoring Capabilities

The Office of Inspector General (OIG) is responsible for overseeing the Department's reform efforts and providing support and guidance to personnel. OIG is comprised of the Compliance Unit, which serves as the Department liaison with the IMT, and Plaintiff's Attorneys, and the Audit and Inspections Unit (which is responsible for conducting compliance audits required by Task 51 [Compliance Audits and Integrity Tests]). In addition, the OIG coordinates policy development and prepares reports for the Court and City Council.

OIG regularly meets with the Chief, Assistant Chief, Deputy Chiefs, and Deputy Director to provide feedback concerning compliance issues, accountability, and policy updates. This direct access has meant quicker resolution of problems and has resulted in increased efficiency. This type of feedback has taken root in the culture of the organization and will last far after the NSA has expired.

OIG continues to facilitate bi-monthly management meetings (MAPs, or Management Assessment Program Meetings) to discuss topics affecting compliance and/or accountability. Standing topics include: Department training, performance appraisal updates, Executive Force Review Board updates, and compliance assessor reports. Compliance assessors continue to conduct reviews of their tasks and report on deficient areas and possible solutions. For example, the Compliance Assessor for Task 18 (Arrest Approval), found that officers were not always documenting "no known witnesses" in cases where there were no identified witnesses to the crime. The finding was reported at a MAP meeting, which brought the issue to the attention of commanders, reminding them of the importance of this notation. The Compliance Assessor also worked with OIG staff to get a special order published introducing the requirement that the phrase "no known witnesses" be used when appropriate.

OIG has also implemented a bi-monthly Compliance Assessor meeting to augment the monthly Compliance Assessor reports. OIG staff meets with Compliance Assessors prior to the MAP meetings to discuss successes and/or problem areas within their specific tasks, and identify possible solutions. Results of these meetings are then shared with commanders at MAP.

In order to keep executive management up to date on NSA progress, OIG has implemented a weekly management report that tracks several key NSA areas. The report is shared with the executive management team every Friday morning and includes the following topic areas: overdue performance appraisals, training, Compliance Assessor Reports, policy updates, and the timelines for assigned Internal Affairs Division cases. This format provides the Chief and Assistant Chief the opportunity to ensure that administrative assignments are completed in a timely manner.

OIG facilitated the development and/or revision of a number of policies critical to ensuring successful implementation of NSA requirements, including policies on criminal misconduct investigations, probable cause arrest authorization, performance appraisals, and complaints against Department personnel or procedures.

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OIG continues to conduct probative audits and reviews to ensure compliance with the NSA. Since the last report to Council, OIG has published five audits:

- Fourth Annual Mobile Data Terminal Traffic Audit
- Methods for Receiving Citizen Complaints
- Performance Review Meetings
- Summary of Citizen Complaints Provided to OPD Personnel and Disclosure of Possible Investigator Bias
- Timeliness of Internal Investigations

OIG continually assesses the need for technological solutions that will increase the efficiency and effectiveness of Department work practices, including reform efforts. OIG recently purchased a document tracking system that will allow for internet-based training and electronic tracking of publications. This will increase the efficiency of OIG data entry and its ability to distribute training bulletins/policy updates in a timely fashion.

In addition, after discussions with the IMT and recommendations from the Criminal Investigation Division, the Department successfully pursued and obtained grant monies to fund new technology that enhances its ability to gather evidence concerning crimes and suspects through state-of-the-art recording equipment. This technology will soon be installed and available for all investigators to use. This will increase OPD's transparency as an agency and provide valuable criminal case evidence.

Through the audits, reviews, compliance assessor oversight, and regular meetings with executive management, OIG is building the capacity to self-monitor. OIG has helped highlight a number of deficiencies that impact compliance. As the substantial compliance period draws closer, audits and reviews are essential to identifying shortcomings and the solutions to overcome them.

Efforts to Reach Substantial Compliance by December 2008

The Department is required to reach compliance with a total of 51 NSA tasks. Some tasks have only one requirement and others have multiple requirements. Reaching full compliance is a three-step process, moving from policy compliance to training compliance and concluding with actual practice compliance. In the actual practice compliance stage, the IMT evaluates how well the Department is following its approved policies. An overview of current status shows:

Policy Compliance

- Each of the 51 tasks required the development of a policy or directive to reflect its requirements.
- All 51 tasks have attained policy compliance.

Training Compliance

- A total of 44 of the 51 tasks require training of at least 95% of relevant personnel.

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- The Department has achieved training compliance with all 44 tasks.

Actual Practice Compliance (see Table 1)

- The Department has been deemed in full practice compliance (compliance with all requirements of the task) with 18 tasks.
- The Department is in partial actual practice compliance (compliance with at least one but not all of the requirements of the task) with 20 tasks.
- Eight tasks are not yet in practice compliance.
- Five tasks have yet to be assessed by the IMT.

Table 1: Actual Practice Compliance

Compliance Status	Number of Tasks
Full Compliance	18
Partial Compliance	20
Not in Compliance	8
Not Yet Assessed	5

Since the last status report, OPD has increased full actual practice compliance by four tasks and partial actual practice compliance by four tasks, detailed below.

Full Compliance (Added Since Last Status Report)

- Task 19 (Unity of Command)
- Task 24 (Use of Force Reporting)
- Task 31 (Officer Involved Shooting Investigations)
- Task 48 (Department Annual Management Reports)

Partial Compliance (Added Since Last Status Report)

- Task 43 (Academy and In-Service Training)
- Task 25 (Use of Force Investigations and Report Responsibility)
- Task 26 (Use of Force Review Board)
- Task 35 (Use of Force Reports – Witness Identification)

The Department will continue to work with the Independent Monitoring Team to identify any issues that effect compliance findings. The Department has access with two respected consultants to provide advice and accelerate our compliance efforts over the next few months. The Department has continued to build our internal auditing capabilities in an effort to identify problem areas early and implement proactive solutions. These efforts will require a sustained commitment of resources to ensure full compliance.

SUSTAINABLE OPPORTUNITIES

Economic: Effective implementation of the provisions of the Agreement 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.

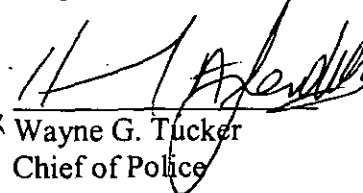
Social Equity: The purpose of the Agreement is to promote police integrity and prevent conduct that deprives persons of the rights, privileges, and immunities secured or protected by the Constitution or laws of the United States.

The overall objective of the NSA is to provide expeditious implementation of the best available practices and procedures for police management, which will enhance the ability of the Oakland Police 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.

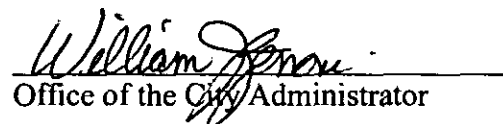
Respectfully submitted,


For Wayne G. Tucker
Chief of Police

Prepared by:

Captain Paul Figueroa, and
Ms. Kristin Burgess
Office of Inspector General

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:


Office of the City Administrator

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