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AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Sean Whent

SUBJECT: An Informational Report on Police Response to Demonstrations in Late November-December 2014, Subsequent Violence and Vandalism, and Resulting Prosecution

DATE: February 5, 2015

City Administrator
Approval

Date

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Public Safety Committee accept this Informational Report from the Oakland Police Department (OPD) on Planning for and Responding to Recent Demonstrations and Subsequent Violence and Vandalism and Resulting Prosecution.

OUTCOME

This report will help facilitate discussion between the Oakland Police Department and the Public Safety Committee regarding planning for – and responding to – demonstrations from November 24 through December 31, 2014. This report also provides information regarding mutual aid.

BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland has a long history of honoring and supporting peaceful protest activities. In recent years, although most protests and civil actions have consisted of peaceful activities, some events have involved acts of violence and vandalism. A series of recent protests began with the November 24, 2014 issuance of the Grand Jury finding in the shooting of Michael Brown in Ferguson, Missouri. These protests encompassed the December 3, 2014 issuance of the Grand Jury finding in the death of Eric Garner in New York City. Altogether, 23 protests took place in the City of Oakland from November 24 through December 31, 2014. Some of these were clearly attributed to the Grand Jury findings. Others were at least potentially related and included titles such as “End Police Brutality,” “March Against State Violence,” and “FTP (‘F--- the Police’) Bike Ride for Black Lives.”

ANALYSIS

While the overwhelming majority of protestors behaved peacefully, a significant number of protestors went beyond just marching, shouting, and shutting down streets and intersections. A significant number of protestors committed acts of vandalism and violence. The following table

Item: _____

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provides descriptive statistics about the November 24 through December 31, 2014 protests and the OPD response to them.

Table 1. Summary Statistics of the November-December 2014 Protests.

Protests*	24
Protestors	9,860
OPD Personnel Deployed	5,115
Personnel Complaints	8
Uses of Force	22
Officer Injuries	11
Physical Arrests	116
Citations Issued	230
Cases presented so far to the Alameda County DA	162

*Includes OPD mutual aid response to one Berkeley protest

There were 22 reported uses of force. Most of these were for (Level 4) physical prowess techniques. There was also one deployment of chemical munitions and one electronic weapon usage. There were eight personnel complaints for unlawful detention, improper search, unjustified stop and arrest, and unnecessary force.

Arrest and Prosecution of Offenders

In addition to the physical arrest of 116 individuals, 231 people were issued citations. The physical arrests ranged from vandalism to assaulting a peace officer. The majority of the citations issued were for failing to disperse after a declaration was given.

Determinations on which protestors are physically arrested versus which protestors are issued citations is provided in the OPD policy on crowd control and crowd management, which states “individuals arrested for minor offenses may be cited and released in compliance with Penal Code §853.6 and Department General Order M-7”¹ Penal Code Section 853.6(a)(1) states: “in any case in which a person is arrested for an offense declared to be misdemeanor...that person shall... be released...” Penal Code Section 853.6 also enumerates exceptions to this requirement. OPD General Order M-7 states “it shall be Departmental policy to issue citations for misdemeanor offenses...unless one or more of the criteria set forth in Part III of [the general] order exist.” Under most crowd control and crowd management circumstances, there are insufficient criteria to deny the issuance of a citation for a misdemeanor and to compel physical arrest and booking. The OPD crowd control and crowd management policy states: “the mere fact that further demonstrations are likely to be held in the near future is not a proper basis to apply subdivision (7) of P.C. 853.6 (‘reasonable likelihood that the offense may continue or resume’) to individual demonstrators...There must be an articulable objective basis to believe

¹ Oakland Police Department, Training Bulletin III-G, “OPD Crowd Control and Crowd Management Policy” Section VIII

that, if cited out, those specific individuals would continue the same illegal activity for which they were arrested.”

As of the writing of this report, 162 cases (physical arrests and citations) have been presented to the Alameda County District Attorney’s Office for prosecution. Additional cases will be presented for prosecution in the coming weeks. Of the 162 cases presented for prosecution thus far, follow up investigation was requested on 12 cases, 10 cases were charged, and six cases were not charged. The following table provides a breakdown of the charges filed to date.

Table 2. Summary of Charges Filed Against November-December 2014 Protesters by the Alameda County District Attorney as of February 5, 2015

Violation	Charges Filed as of February 5, 2015
Battery	1
Resist, Obstruct, or Delay a Peace Officer	4
Arson	1
Battery on a Peace Officer	2
Obstruction of Public Right of Way	5
Vandalism	1
Burglary	3
Total	17

Planning for Protests

The Oakland Police Department engages in a dynamic process in planning responses to protests. Command staff reviews all available information in assessing the level and type of necessary OPD response. Notifications are made to outside agencies to better coordinate responses. If it is determined that the Incident Command System (ICS), an emergency management system used to coordinate and allocate resources of a multi-agency disaster response, is to be activated, OPD’s planning section is tasked with making recommendations about necessary resources and the assignment of such resources. Depending upon the information, the response may range from a reassignment of field personnel to a full ICS activation requiring the assignment of all available sworn personnel. A partial or full ICS activation may include:

- The reassignment of all available personnel from their regular duties
- The extension of regular patrol shifts to thirteen hour work days
- The assignment of an entire shift of personnel to protest activities
- The cancellation of regular days off for all available personnel

In addition to the assignment of management, supervisory, and line-level sworn personnel to frontline protest activities, such as crowd control, a significant number of sworn personnel are required to provide second-level support. Second-level support can include further planning, intelligence-gathering, and special response teams. Command staff is tasked with roles such as

Incident Commander and Operations Section Chief. Non-sworn personnel are required to provide communications and other support.

After an initial meeting to determine the appropriate deployment of OPD personnel and other resources, communication between the Planning Section and other key elements is ongoing. The Planning Section makes continuous adjustments to the Operations Detail throughout the planning and operational periods.

Mutual Aid

OPD relies on mutual aid at times to ensure that a sufficient number of officers can be deployed at protests to ensure the safety of OPD personnel and all residents, as well as to ensure a minimal level of vandalism and damage to property. OPD would not have been able to respond to the many recent protests as it did with minimal harm to officers and damage to property, without Mutual Aid. Law Enforcement Mutual Aid is governed by the California Office of Emergency Services (CalOES). An explanation of the CalOES mutual aid protocol is provided on the CalOES website.²

The Mutual Aid System is an extension of the concept of "neighbor helping neighbor." The Law Enforcement Mutual Aid System was established in 1961, and has been used to restore order during emergencies, including civil unrest and to provide assistance to local agencies during other unusual events... The basic concept provides that within the operational area, adjacent or neighboring law enforcement agencies will assist each other. Should the event require assistance from outside the county, the region will provide requested assistance to the impacted county.

Planned events, such as concerts, parades, fairs, etc. are the responsibility of local agencies. Any requirement for additional public safety presence should be addressed through contractual arrangements. If any event, planned or spontaneous, appears that it may result in a request for mutual aid, or some other special resource, and early call to the CalOES Law Enforcement Branch is encouraged. A staff peace officer from the branch will usually be assigned to work directly with the jurisdiction to assist in plans development.

The California Emergency Services Act is codified in the California Government Code. Section 8617 provides:

In periods other than a state of war emergency, a state of emergency, or a local emergency, state agencies and political subdivisions have authority to exercise mutual aid powers in accordance with the Master Mutual Aid Agreement and local ordinances, resolutions, agreements, or plans therefor.

² <http://www.calema.ca.gov/lawenforcement/pages/mutual-aid.aspx>

As provided in the 2014 Edition of the Law Enforcement Mutual Aid Plan:³

Response costs are absorbed by the responding agency notwithstanding any other agreements to the contrary, or availability of disaster reimbursement funds from another source.

Law enforcement agencies do not typically seek costs for reimbursement from one another when responding to emergencies requiring mutual aid. Law enforcement agencies typically maintain mutual aid reciprocal relationships with each other, as most agencies require support from other agencies at different times. As explained below, OPD was a net consumer of mutual aid during the recent protest period. In fact, over many years OPD utilizes the mutual aid of other law enforcement agencies more often than that it has been called on to provide mutual aid to other agencies. If agencies – including OPD – sought reimbursement for mutual aid in the relevant protest period, the City of Oakland would have incurred a net expense of no less than \$145,813 from the recent protests.

The estimated cost of documented mutual aid provided to OPD is \$178,813 at minimum, using a base-rate assumption that all responding personnel were being paid on-duty beginning pay for officers. This estimate does not include any additional pay for overtime or for supervisory or management personnel who provided mutual aid. This amount also does not include the cost of approximately 300 CHP personnel, as the CHP did not check in and out of the event on two occasions so the length of their deployment – and true staffing size – are unknown. This amount also excludes an estimate for the deployment of four sworn Alameda County Sheriff's Office personnel who provided two buses for an unknown amount of time in one deployment. The estimated cost of mutual aid provided by OPD for a Berkeley protest is approximately \$33,000, which includes paying overtime to all Oakland personnel and includes all ranks that participated in the mutual aid response. Hence, the total cost of the mutual aid received by Oakland for 23 protests, as well as provided by Oakland (the cost to OPD for the one Berkeley protest), is close to a net total of \$200,000, with Oakland receiving the vast majority of this benefit.

For the twenty-three protests that took place from November 24 through December 31, 2014 in Oakland, mutual aid was provided to OPD a total of seven times. The estimated total number of sworn personnel provided through mutual aid was 1,366. The CHP provided an estimated 656 sworn personnel to assist OPD. Local law enforcement agencies provided an additional 710 sworn personnel to assist OPD. The only documented instance of OPD providing mutual aid was on December 8, 2014. On that date, OPD provided fifty sworn personnel to the Berkeley Police Department. **Attachment A** provides detailed information about mutual aid provided to the City of Oakland during the protest period.

³ <http://www.calema.ca.gov/LawEnforcement/Documents/BlueBook%20%20Revision%205-14.pdf> Page 9

PUBLIC OUTREACH/INTEREST

This report is of public interest as it directly relates to safety within the Oakland community. This report has been noticed on the City website.

COORDINATION

The City Attorney's Office was consulted in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities identified in this report.

Environmental: No environmental opportunities have been identified.

Social Equity: This report provides valuable information to the Oakland community regarding crime reduction efforts.

For questions regarding this report, please contact David Downing, Deputy Chief of Police, Bureau of Services, at (510) 238-7620.

Respectfully submitted,



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Attachment A

November 24, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	69 Sworn	\$11,512
Alameda Police	13 Sworn	\$2,615
Berkeley Police	15 Sworn	\$2,330
California Highway Patrol	100 Sworn (estimate – did not check in)	Unknown
Contra Costa County Sheriff's Office	47 Sworn	\$3,886
Fremont Police	16 Sworn	\$2,799
Hayward Police	23 Sworn	\$4,863
Livermore Police	4 Sworn	\$690
Newark Police	6 Sworn	\$1,100
Pleasanton Police	6 Sworn	\$1,104
San Leandro Police	13 Sworn	\$2,866
UC Berkeley Police	9 Sworn	\$1,842
Union City Police	9 Sworn	\$1,447
Total	330 Sworn	\$37,052

November 25, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	89 Sworn	\$17,263
Alameda Police	15 Sworn	\$1,687
Berkeley Police	15 Sworn	\$1,125
California Highway Patrol	200 Sworn (estimate – did not check in)	Unknown
Fremont Police	16 Sworn	\$2,202
Hayward Police	22 Sworn	\$4,513
Livermore Police	5 Sworn	\$545
Newark Police	4 Sworn	\$519
Pleasanton Police	5 Sworn	\$852
San Leandro Police	17 Sworn	\$3,253
UC Berkeley Police	17 Sworn	\$3,739
Union City Police	10 Sworn	\$1,135
Total	415 Sworn	\$36,832

November 26, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	47 Sworn (with buses)	\$2,814
California Highway Patrol	276 Sworn* (estimate)	\$66,024
UC Berkeley Police	11 Sworn	\$1,554
Total	334 Sworn	\$70,392

*California Highway Patrol personnel were reassigned to Sideshow activity.

December 5, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	4 Sworn (with buses)	\$14*
Total	4 Sworn	\$14

* Bus was cancelled immediately upon arrival at staging area.

December 13, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	53 Sworn (with buses)	\$2,601
Alameda Police	13 Sworn	\$763
Berkeley Police	38 Sworn	\$6,733
California Highway Patrol	80 Sworn (estimate – did not check in)	\$14,651
Emeryville Police	8 Sworn	\$1,321
Fremont Police	14 Sworn	\$678
Hayward Police	32 Sworn	\$3,759
Newark Police	4 Sworn	\$381
Pleasanton Police	6 Sworn	\$756
Total	248 Sworn	\$31,641

December 15, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	4 Sworn (with buses)	Unknown
Total	4 Sworn	Unknown

December 31, 2014 Protest

Responding Agency	Personnel Provided	Estimated Cost
Alameda County Sheriff's Office	2 Sworn (with bus)	\$349
Berkeley Police	14 Sworn	\$1,218
Emeryville Police	10 Sworn	\$979
San Leandro Police	5 Sworn	\$335
Total	31 Sworn	\$2,882