



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** LeRonne L. Armstrong  
Chief of Police

**SUBJECT:** Oakland Police Department  
Negotiated Settlement Agreement  
Status Update

**DATE:** February 22, 2022

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City Administrator Approval *Elizabeth Lake*

Date: Feb 24, 2022

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## **RECOMMENDATION**

**Staff Recommends That The City Council Receive An Informational Report From the Oakland Police Department On Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al.**

## **EXECUTIVE SUMMARY**

The Oakland Police Department (OPD) has continued its efforts to achieve full compliance with the [Negotiated Settlement Agreement](#) (NSA) by focusing on the remaining five tasks that were not yet in full compliance and the four areas identified by the Court during the January 5, 2022 Case Management Conference in the case of *Allen v. City of Oakland* lawsuit, known as the “Riders” case. Over the last several months, OPD has been working diligently to improve investigative timelines and update policies. Since the OPD’s December 2021 NSA update to the Public Safety Committee, OPD achieved compliance with two of the five outstanding tasks, Task 2 (Timeliness of Internal Affairs Investigations) and Task 5 (Internal Affairs Complaint Procedures), leaving three tasks in partial compliance.

This report provides the compliance status of all NSA tasks that are not yet in full compliance and an update on the January 5, 2022 Case Management Conference. Detailed information about OPD’s compliance efforts is included in the City’s Court Filing for the January 5, 2022 Case Management Conference with the Honorable William H. Orrick (**see Attachment A**).

## **BACKGROUND**

In 2003, the City of Oakland (Cit) entered into the NSA with Plaintiffs to settle the the Riders case. The NSA requires implementation of 51 tasks to promote police integrity and prevent unconstitutional policing. A court-appointed monitor (Monitor) reviews and reports on compliance with each task and makes a determination of whether the task is “in compliance,” “out of compliance,” or “in partial compliance.”

Public Safety Committee  
March 8, 2022

A request for a “Negotiated Settlement Agreement (NSA) Bi-Monthly Update” report was made at the October 24, 2019 Rules and Legislation Committee and a report and presentation were presented to the Public Safety Committee on January 14, 2020. OPD later released a “[Bi-Monthly OPD NSA Status Update](#)” memorandum (dated February 8, 2021) to the City Council and Mayor which is published on the City’s website<sup>1</sup>. The request for a bi-monthly update report was changed to a verbal bi-monthly update report at the May 11, 2021 Public Safety Committee. Later, a request for an informational report to the public safety committee on progress with NSA was made at the Rules Committee on July 22, 2021. The last verbal update to the Public Safety Committee occurred on December 14, 2021.

## **ANALYSIS AND POLICY ALTERNATIVES**

OPD is in compliance with 48 of the 51 original NSA tasks and in partial compliance with three tasks. The Monitor filed its most recent report, the [Seventy-Ninth Report](#), on February 22, 2022. In the Seventy-Ninth Report, the Monitor updated the compliance status of Tasks 2 (Timeliness of Internal Affairs Investigations) and 5 (Internal Affairs Complaint Procedures) to “in compliance.” The remaining tasks that do not have a current assessment of full compliance are as follows:

Task 25 – Use of Force Investigations	Partial Compliance
Task 34 – Vehicle Stops, Field Investigations & Detentions	Partial Compliance
Task 45 – Consistency of Discipline	Partial Compliance

### ***Task 25 (Use of Force Investigations)***

The Monitor’s most recent assessment of Task 25 was in its [Seventy-Eighth Report](#) filed on January 10, 2022 and included a review of 91 Level 3 and Level 4 use of force reports that were completed by OPD personnel between April 1-July 31, 2021. The Monitor did not identify any instances where the force may not have been appropriate, where the use of force was not deescalated or stopped reasonably when resistance decreased, or any instances where the officers could have made additional efforts to explain to subjects being detained why the detention was occurring prior to using force. Also, none of the Level 3 or Level 4 investigations they reviewed resulted in their finding that the force did not comply with policy. However, they noted the following areas of concern:

- meeting internal timelines for use of force investigations.
- numerous instances where officers failed to identify themselves as police officers when it was appropriate and there was time to do so.
- some deficiencies in the use of “boilerplate” or “pat” language.
- instances where supervisors fail to identify deficiencies in officer reporting and fail to identify or address Manual of Rules (MOR) violations, and failures of reviewers of the supervisor reports to identify or address concerns.
- body-worn camera late activations or failure to have buffer activated as required.

Additional training and reminders have been disseminated to sworn officers and their supervisory and command staff to mitigate these issues. The above issues have been

<sup>1</sup> <https://www.oaklandca.gov/resources/info-memo>

discussed in line-up training and annual in-service training. As reported by OPD in the Joint Case Management Statement for January 2022:

Officers' use of boilerplate "in my training and experience" without citing relevant training or experience has decreased. Officers announce themselves as police officers prior to making arrests more often. And body-worn camera non-activations are rarely an issue, though delays may still occur.

Although no late body camera activations have so far hindered a use of force investigation and late activations cannot be fully eliminated, OPD continues to focus on identifying late activations and correcting shortcomings as appropriate, ensuring accountability at all levels. Recently, OPD's Office of Inspector General (OIG) audits on specific arrests and uses of force included a review of body-worn camera activation that revealed a high level of compliance. Any non-compliant activations were forwarded to the chain of command to be addressed. OPD will include body-worn camera reviews in other aspects of its administrative functions so that activation timeliness continues to improve.

With the deployment of the new Axon camera system, the auto-activation feature further mitigates late activations and the modern software associated with the new system eases the review burden. The current body-worn camera policy is adequate to cover usage of the new Axon system, but a policy update will likely occur in the future to capture new capabilities.

#### ***Task 34 (Vehicle Stops, Field Investigations & Detentions)***

The Monitor has not assessed Task 34 since the [Sixty-Ninth Report](#), filed on July 28, 2020 and the task remains in partial compliance. The Monitor pointed out the importance of more probing analysis during the risk management process and assessing risk by asking the right questions. With the hiring of an internal data manager in October 2020, OPD's risk management meetings and the data provided prior to those meetings, has become more precise, usable, and flexible.

#### ***Task 45 (Consistency of Discipline)***

The Monitor's most recent assessment of Task 45 was in the [Seventy-Seventh Report](#), filed on December 8, 2021 and included a review of 40 cases with a sustained finding that were approved between May and August 2021. The Monitor found that discipline fell within the Discipline Matrix that was in effect at the time of the action for all cases they reviewed. They also noted that they continue to follow the OPD's response to the discipline disparity study conducted in 2020 by an external consulting firm on behalf of OPD.

#### **Case Management Conference (January 5, 2022)**

During the most recent Case Management Conference, the Honorable William H. Orrick praised the hard work of the OPD Chief and command staff and acknowledged positive achievements in "a remarkable decrease in non-dispatch stops, the comprehensiveness of use of force investigations, the reduction in disparity in discipline and the success in recruiting diverse officers to the force." However, he also identified four important areas of noncompliance that need to be fixed before OPD may reach substantial compliance.

1. Internal Affairs (IA) timelines

2. Use of force investigation timelines
3. Body-worn camera activation delays
4. Completion of the following NSA-related policies:
  - o Anti-discrimination policy
  - o Cell phone usage policy
  - o Social Media participation policy
  - o Risk Management policy
  - o Type 32 use of force policy

The status of these policies are discussed below. The Court stated the expectation that all areas identified should be resolved by the next Conference on April 27, 2022. Assuming that “all the structures of the NSA will be in place and complied with by April 27, 2022,” the Court asked the parties to think about, “the best way forward for the Court’s oversight of the NSA and OPD. Is the Court’s oversight still required and valuable, and if so, in what ways?” For the full transcript of the January 5, 2022 Case Management Conference see **Attachment B**.

### ***Internal Race and Equity Work***

Since OPD’s May 2020 release of the [Oakland Police Department Police Discipline Disparity Study](#), OPD has implemented all recommendations with the final one being Project Reset, which is being facilitated in late 2021. OPD continues to work with Stanford researchers to develop curriculum and to train the trainers who will work to deliver the curriculum to the rest of the department. The department has created a schedule for the delivery of this training. The department is on task with this scheduled training.

### ***Policy Development and Publication***

OPD and the Police Commission continue to collaborate, develop, and implement important policies that improve further progress towards NSA compliance. Below are NSA-related policies that are currently under development or in the review process.

<b>POLICY</b>	<b>STATUS</b>
<b>D-20 Anti-Discrimination</b>	Completed Independent Monitoring Team (IMT) review with comments and revisions. Draft with Police Commission. The first ad hoc meeting was held 16 Feb 22. Next step: Police Commission ad hoc process, second meeting on 23 Feb 22.
<b>I-19 Electronic Devices</b>	Completed IMT review with comments and revisions. Next step: OPD must send draft to Commission, Police Commission to schedule ad hoc process, no dates yet.
<b>D-18 Person Social Media</b>	Ongoing ad hoc with Police Commission
<b>R-01 Risk Management</b>	Completed IMT review with comments and revisions. Draft with Police Commission. Next step: Police Commission ad hoc process. Tentative start at end of February 2022.
<b>SO 9208 Type 32 Force Reporting</b>	With Police Commission. OPD sent agenda placement request on 3 Jan 22.

OPD's efforts to develop processes and procedures to address all NSA tasks support the citywide priority of **community safety**, as well as **responsive, trustworthy government**. These efforts support contemporary, procedurally just policing that promote police-community trust and public safety. OPD's efforts to show progress with the NSA tasks, as outlined in this report, support the City's efforts toward increased responsiveness and trust and community safety. The City details OPD's compliance efforts in its Court Filing for the September 1, 2021 Case Management Conference with the Honorable William H. Orrick (**see Attachment A**).

### **FISCAL IMPACT**

This report is for informational purposes only and does not have a direct fiscal impact or cost.

### **PUBLIC OUTREACH / INTEREST**

No public outreach was necessary outside of standard Council noticing and publishing requirements.

### **COORDINATION**

OPD regularly consults with the City Administrator's Office and the Office of the City Attorney on NSA matters and reports.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** There are no economic opportunities associated with this report.

**Environmental:** There are no environmental opportunities associated with this report.

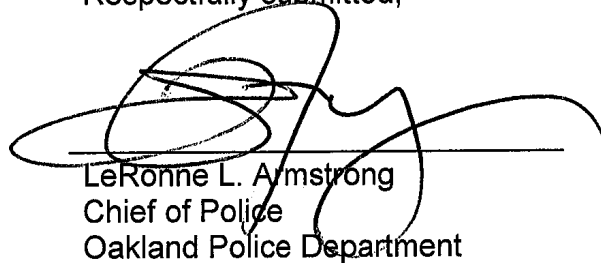
**Race and Equity:** In March 2019 OPD hired a consulting firm to conduct a review of potential disparities in the department's internal investigations of police misconduct and any resulting discipline. In response to the Police Discipline Disparity Study conducted by the consulting firm Hilliard Heintze, OPD created a working group and Steering Committee on Racial Disparity in conjunction with the Internal Race & Equity Team (IRET) and Stanford researchers. The purpose of this collaboration was to conduct an initial impact analysis of the Discipline Disparity Study and to identify quantitative and qualitative data sets to support OPD in measuring the effectiveness of the implemented strategies borne out of the Discipline Disparity Study. From this partnership, a Racial Disparity Working Group was formed and has since implemented the recommendations from the Discipline Disparity Study, with only Project Reset left to complete.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends that the City Council receive an Informational Report from the Oakland Police Department on progress toward compliance with the NSA in the case of Delphine Allen, Et Al.

For questions regarding this report, please contact Kristin Burgess-Medeiros, Audit Supervisor, Office of Inspector General, at [kburgess@oaklandca.gov](mailto:kburgess@oaklandca.gov).

Respectfully submitted,



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**Attachments (2)**

**A:** *Joint Case Management Statement, Case No. 00-cv-04599 WHO, filed August 25, 2021.*

**B:** *Transcript of Proceedings, Joint Case Management Conference, January 5, 2022, Case No. 00-cv-04599 WHO, Docket 1503*

