

# CITY OF OAKLAND

## AGENDA REPORT

OFFICE OF THE CITY CLERK  
CITY OF OAKLAND

2006 APR 26 PM 6:23

**To:** Office of the City Administrator  
**Attn:** Deborah Edgerly  
**From:** Police Department  
**Date:** May 9, 2006

**Re:** **A Status Report from the Chief of Police Outlining the Oakland Police Department's Efforts to Implement the Provisions Required in the Negotiated Settlement Agreement (NSA) of Delphine Allen, et al, v. City of Oakland, et al, United States District Court Case No. C00-4599 (TEH)**

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### SUMMARY

This report summarizes the measures implemented by the Oakland Police Department (OPD) from January 1, 2006 through March 31, 2006. It will also address the Department's continuous efforts toward achieving full compliance with the provisions outlined in the Negotiated Settlement Agreement (Agreement).

### FISCAL IMPACT

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

### BACKGROUND

On January 22, 2003, the City of Oakland and the Oakland Police Department entered into a Negotiated Settlement Agreement between the City of Oakland and the plaintiffs in the Delphine Allen, et al. consolidated case, resulting from allegations of police misconduct raised by private plaintiffs, *Delphine Allen, et al., v. City of Oakland, et al.*, in a civil lawsuit. Both parties entered into this Settlement Agreement with the intent of promoting police integrity and preventing conduct that deprives persons of their Constitutional Rights. All Police Department personnel have been instructed to act in full compliance with the provisions contained in the NSA. Under the direction of a Federal Judge, status conferences are conducted to track the progress associated with the NSA, and address all other pending matters relative to the Agreement.

In accordance with the Negotiated Settlement Agreement, Section XIII.II, the Independent Monitoring Team (IMT) is required to submit to the court and all parties (stakeholders) identified in the Agreement, quarterly reports which contain compliance status updates and implementation efforts put forth by the Police Department and City.

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**KEY ISSUES AND IMPACTS**

There are three categories for compliance:

- Policy Compliance - The Department is considered to be in Policy Compliance once the IMT has reviewed and accepted a policy that has been codified in writing..
- Training Compliance – The Department is considered to be in Training Compliance once 95% of all departmental personnel have been trained on a particular policy.
- Actual Practice Compliance – The Department is considered to be in Actual Practice Compliance when the IMT is satisfied that procedural practices outlined by a specific task are being carried out. The IMT makes this determination by conducting an Actual Practice Compliance audit.

General Status of Compliance

There are a total of 52 tasks outlined in the NSA; however the Department is only required to track 51. One task is classified as housekeeping and does not require deliverables. Task 17 (Audit, Review and Evaluation of Internal Affairs Division (IAD) functions) refers to another policy task in the Agreement, leaving 50 tasks that are tracked for Actual Practice Compliance. The IMT has deemed OPD in Actual Practice Compliance with 8 of 50 tasks.

**Table 1**

**Compliance Progress Summary**

TASK STATUS	NUMBER OF TASKS
Tasks Due as of March 31, 2006	51
Tasks in Policy Compliance	46 of 51
Tasks in Training Compliance	26 of 42
Tasks in Actual Practice Compliance	8 of 50

While the Actual Practice Compliance (8 of 50) numbers appear low, this statistic does not reflect Actual Compliance measures for all policies. Recently, several important policies have been adopted and personnel trained that include a high number of associated NSA tasks, such as those related to IAD and Use of Force. As a result, Actual Practice Compliance audits can not be conducted on those tasks. Additionally, the policies most recently adopted represent major policy and procedural changes which require a formal initial implementation and adjustment phase. After the implementation and evaluation phase occurs, the Department will work with the IMT to conduct the appropriate audits and determine Actual Practice Compliance. It is anticipated that these audits will show a significant increase in Actual Practice Compliance.

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### Accomplishments

- **Management Assessment Program (MAP) Meetings**

MAP meetings, which are conducted every other Thursday, continue to be the primary forum for discussion of NSA related topics. Members of the executive and command staff are required to attend and provide updated information as it relates to their respective assignments.

- **Office of Inspector General (OIG)**

The Office of Inspector General has developed a comprehensive plan designed to make individual managers and commanders (Compliance Assessors) responsible for monitoring the status of each task. Compliance Assessors accomplish this by continually reviewing progress through audits, inspections, and problem solving whenever deficiencies are noted. They identify discrepancies, and consistently make the necessary adjustments to bring the Department closer to achieving its goal of obtaining full compliance. As a result of the Assessors' efficiency in reporting, they are now required to submit their reports to the Inspector General on a monthly basis instead of bi-weekly. The Inspector General is encouraged by the professional growth of the Assessors.

The OIG published its combined fifth and sixth Semi-Annual Report in March 2006, and is confident that the report shows the significant progress the Department has made toward achieving compliance with the Agreement. The IMT continues to be encouraged by the Department's commitment to the compliance plan.

- **Training Efforts**

Interaction with other law enforcement agencies is a significant component in affecting the change needed to fulfill the requirements, and intent of the Agreement. Over the past several months the Department has increasingly taken advantage of professional resources, networking, and training opportunities available to law enforcement officials. During this reporting period, OIG staff received training on *Lethal and Less Lethal Use of Force and Non-Disciplinary Employment Law*, which was conducted by the Americans for Effective Law Enforcement (AELE). In February 2006, the members of the Internal Affairs Division attended a three-day seminar on *Officer Involved Shootings*, and received eight hours of training on *Administrative Investigations*, which was conducted by an outside consultant. Additionally, IAD investigators attended a three-day seminar on *Conducting Proper Internal Affairs Investigations*. In March 2006, Homicide and Internal Affairs investigators attended a three-day training seminar on *Officer Involved Shootings* from the Police Training Services Company (PTSC), and ten sergeants attended a Police Officers Standards and Training (POST) certification class on management.

- **Actual Practice Compliance**

In March 2006, the IMT deemed the Department in Actual Practice Compliance with Task 38, Citizens Signing Statements. The IMT reviewed a total of 313 citizen statements

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and found 303 (97%) were in compliance with the requirements of the Agreement. The monitors are currently auditing Tasks 21 (Members, Employees & Supervisors Performance), 34 (Vehicle Stops, Field Investigation and Detentions) and 44 (Personnel Practices). Results of these audits are expected in the next couple of months.

## **POLICY DESCRIPTION**

- **Complaint Processing and Internal Investigations (M-Series)**

The M-Series policy, which was published on December 6, 2005, states that all complaints made by individuals will be assigned a tracking number and entered into the Internal Affairs Division (IAD) database. Cases found to be “sustained” will no longer be reviewed by members of the accused officers’ chain of command, but assigned directly to an IAD commander. The new discipline policy sets clear guidelines for assessing penalties associated with sustained findings of Manual of Rules violations. Training on this policy for all police personnel began December 10, 2005, and was completed February 9, 2006, with a 97.98% compliance rate.

- **Efforts in IAD**

The Internal Affairs Division remains dedicated to refining its practices and getting back on track, especially with the initial complaint in-take process. Command staff is researching ways to use the Divisions support staff more effectively. Policy compliance meetings are held regularly to help identify the needs of the Division in achieving compliance with the policies outlined within the NSA. Case management meetings are conducted weekly by an IA lieutenant, who meets with investigators to review their cases and voice expectations.

The Deputy Chief of IAD has acknowledged that investigators are working hard to complete internal investigations in a timely manner and working in accordance with the new M-3 policies, but they have suffered setbacks as a result of past administrative practices in the Internal Affairs Division. He also recognized that a five-day turn around period for investigations is not enough time to prepare the initial investigative packet. The rigid timeline has not matched the actual time necessary to properly prepare the case for assignment. The Deputy Chief will submit a written plan to the Chief of Police with recommendations to correct identified deficiencies.

- **Increased Involvement of the Oakland Office of the City Attorney (OCA)**

Since April 2005, the Oakland City Attorney’s Office has become increasingly active in various areas of the Oakland Police Department. OPD Departmental Counsel is involved with police training, risk management, policy review, NSA reforms, and consultation with management and line staff. OPD Departmental Counsel reviews and approves all OPD critical policies, such as the use of force, arrests and detention procedures, tasers, etc. Departmental Counsel also attends OPD’s boards of review hearings and advises OPD management about legal issues, policy reforms, and training matters related to officer-involved shootings, use of force incidents and vehicle pursuits and accidents.

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These are some of the areas that have been positively impacted by the Office of the City Attorney. Additionally, since 2005, the City Attorney's Office has provided significant assistance to the Internal Affairs Division. IAD commanders regularly consult with City Attorney staff concerning disciplinary correspondence; statutory guidelines; appropriateness of decisions based on legal theories; allegations of retaliation; and the contents of pre-disciplinary files provided to personnel subjected to proposed discipline. Sustained findings and disciplinary matters are reviewed by the OCA. Representatives of the OCA, including OPD<sup>1</sup> Departmental Counsel, attend weekly IAD meetings with the Chief of Police and the City Administrator, and are available to IAD command staff for consultations and legal advice. City Attorney's also attend Skelly<sup>1</sup> Hearings involving significant discipline.

- **Use of Force Reporting and Investigation (K-Series)**

The final version of the K-Series was signed on February 16 and published on February 17, 2006. Training began on February 25<sup>th</sup> and will continue into April 2006. The training is conducted eight times a week, six hours a day, with approximately 30 individuals per session. To date, 80% of supervisory and command staff and 50% of officers have completed the training.

- **Personnel Information Management System (PIMS)**

The Department made significant progress toward compliance during the late half of 2005, and continues to move forward. Although PIMS is not in full compliance, in January 2006 a draft policy was sent to the IMT for review and comments and returned to the Department.

To improve the PIMS policy development, the Department sent staff members to Phoenix (AZ) and Cincinnati (OH) police departments to review the implementation of their respective early identification and intervention programs. The Phoenix Police Department provided a clear understanding of the importance and usefulness of an early identification and intervention program. Cincinnati Police use the Motorola EVALIS® Personnel Information Management System (system purchased by the Oakland Police Department) to manage its early identification and intervention program. For further policy development, staff attended the 2006 *Early Identification and Intervention Best Practices Training Conference* in Phoenix, Arizona, March 27-30, 2006

The most significant advancement in this project is the acquisition of the Motorola EVALIS® Personnel Information Management System. The hardware and software components of this system will provide the Department with a computerized relational database required by the NSA. It is anticipated that the first ten data modules will be in place by September 18, 2006, with full system delivery by December 25, 2006.

Pursuant to recommendations made by the IMT, two committees were formed to assist the Department in its development of the PIMS early identification and prevention programs; the PIMS Core Committee (which meets weekly) was created and the PIMS

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1. A Skelly is a hearing which must be provided to an employee prior to the imposition of discipline. Generally, Skellys must be provided in the case of termination, demotion, suspension, reduction in pay and transfer with an accompanying loss in pay.

Steering Committee (which meets monthly) was re-established. The committees are designed to provide guidance and direction to the Department and staff in the development of the PIMS early identification and prevention programs. In March 2006, the City hired a PIMS Administrator (Civil Service job classification “Police Personnel Operations Specialist”) with 20 years experience with the Los Angeles Police Department in personnel management and statistical analysis, who began working with the Police Department in April 2006.

The first set of detailed supervisory analyses, identified as Management Assessment Memorandums (MAM), were returned for evaluation to the PIMS Administrative Review Panel (ARP), which is comprised of the Personnel Division Commander and the Department’s contracted advisory mental health professional. Commanders, managers, and/or first line supervisors are required to complete an MAM when a PIMS Threshold notifies them that one of their members or employees has exhibited an “at-risk” pattern of behavior. As of this date, only three of the 261 PIMS Threshold letters sent out for comment indicated a need for active intervention beyond closer supervision.

- **Use of Camcorders**

A Request for Proposals process concluded in February 2006 and the Department identified a vendor (Digital Patroller) to install approximately 80 cameras in police vehicles. Police Department staff will present a report to the Public Safety Committee on May 23, 2006 to seek authorization to enter into contract negotiations.

- **Audits and Inspections Unit**

The OIG’s Audit and Inspection Unit completed its audit on Task 27 (OC Log and Checkout Procedures) on March 30, and is currently conducting audits on Tasks 36 (Transporting Detainees and Citizens), 39 (Personnel Arrested, Sued, or Served), 46 (Promotional Consideration Review), and 47 (Community Policing). Audits conducted by the Audit and Inspections Unit are for internal management purposes only, and do not determine Actual Practice Compliance.

## **SUSTAINABLE OPPORTUNITIES**

**Economic** - Effective implementation of the provisions of the Agreement will help reduce or prevent the incidence of litigation in the areas of use of force, civil rights, conduct, and other activities that expose the City to liability costs, and judgment pay-outs. 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.

**Environmental** - No environmental opportunities are contained in this report.

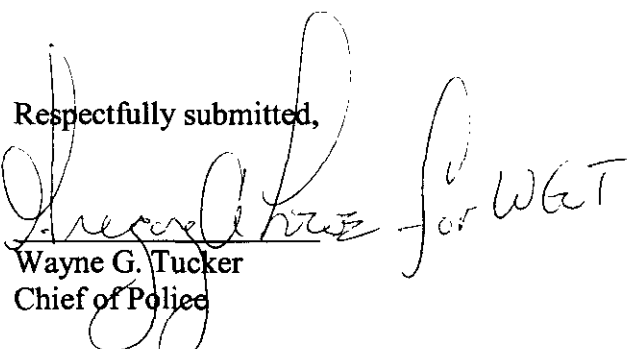
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**Social Equity** - The purpose of the Agreement is to promote police integrity and prevent conduct that deprives persons of the rights, privileges and immunities secured or protected by the Constitution or laws of the United States.

The overall objective of the Negotiated Settlement Agreement (initially with the oversight of an outside monitoring body) is to provide expeditious implementation of the best available practices and procedures for police management. Areas included are supervision, training, and accountability, which will enhance the ability of the Oakland Police Department to protect the lives, rights, dignity, and property of the community it serves.

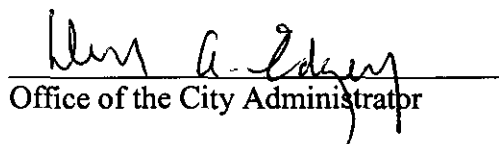
### RECOMMENDATION

Staff recommends acceptance of this status report on the Police Department's plans to attain compliance with the terms of the Negotiated Settlement Agreement.

Respectfully submitted,  
 for WGT  
Wayne G. Tucker  
Chief of Police

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Office of Inspector General  
Office of Chief of Police

APPROVED AND FORWARDED TO  
THE PUBLIC SAFETY COMMITTEE:

  
Office of the City Administrator