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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND
AGENDA REPORT

2010 APR 15 PM 5:15
Office of the City Administrator

Attn: Dan Lindheim
From: Police Department
Date: April 27, 2010

Re: **An Informational Report from the Oakland Police Department on the Status of the City's Efforts to Continue to Implement Institute New Police Practices Consistent with Law Enforcement Industry Standards and as Required by the Honorable Thelton Henderson in the Case of *Delphine Allen, et al. v. City of Oakland, et al.***

SUMMARY

This report briefly summarizes the reform measures implemented by the Oakland Police Department since last reported on September 23, 2008, and addresses the Department's continued efforts toward achieving compliance with the provisions OPD's policies and protocols. More specifically, this report details recent changes created by a two-year Memorandum of Understanding (MOU), which replaced the NSA following the termination of that agreement on January 22, 2010. While the MOU provides for a reduced scope of monitoring, the Department is still under an obligation to reach and maintain compliance with all the objectives of the NSA as those are reflected in OPD's policies and protocols. A new independent monitor has also been chosen for the duration of the MOU.

FISCAL IMPACT

The cost to the City of implementing the reforms agreed upon by the City in the NSA 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. The increased efficiencies and transparency brought by the NSA to the Department has helped to decrease law suits and provides improved inoculation against those that do occur. The NSA has also helped establish some of the most promising practices in law enforcement, aiding the Department in its efforts at early identification of problems. The practices brought on by the NSA also help to increase citizen trust, which contributes to increased efficiency in departmental operations through community policing.

To date, the estimated total cost of instituting police reforms continues to be comprised of the following expenses: staffing the Office of Inspector General; labor-intensive auditing work; policy development and updating; training personnel; continued improvement of the internal investigative process for use of force and police misconduct; maintenance and continued development of an "early warning system" for detecting problematic trends in police work and assessing the need for intervention and assistance; and outside monitoring fees. Moreover, in

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December 2009, the City Council approved up to \$1,500,000 for monitoring services during the two-year term of the MOU.

BACKGROUND

Since January 22, 2003, the City and the Department have worked to implement the reforms outlined in the NSA. These reforms 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 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.

The original term of the NSA was five years, with a provision for a two-year extension. The Department was unable to meet its obligations in the first five years of the Agreement, which resulted in a two-year extension. While the Department made significant progress during the two-year extension, it was still unable to reach full compliance before the expiration of the NSA on January 22, 2010. Subsequently, the Court ordered the parties to continue the work for an additional time and the parties entered into a two-year MOU, which supersedes the NSA.

The MOU details 22 tasks from the NSA which remain active to monitoring. The remaining 29 tasks of the NSA are considered inactive to monitoring, but may become active again if the Monitor observes any material non-compliance. Thus, the City and Department are still obligated to reach and maintain full compliance with all objectives of the NSA.

The previous Independent Monitoring Team (IMT) chose not to continue its monitoring efforts with the MOU. The City subsequently hired Robert Warshaw, of Police Performance Solutions, LLC, (PPS/IMT) to take over monitoring responsibilities.

KEY ISSUES AND IMPACTS

The City is currently in the two-year period agreed upon in the MOU, which resulted from the termination of the NSA. However, The City is still obligated to reach and maintain compliance with all objectives of the NSA. Any back-sliding of reform efforts will likely result in additional tasks becoming actively monitored. The Department must still reach compliance and maintain compliance for a one-year period for each active task in order to be considered in-compliance.

The City last appeared before Judge Thelton E. Henderson in Federal Court for a Case Management Conference on November 29, 2009. The court approved the MOU at that time. This was also the last court appearance for the IMT. The next court date, and the first for the PPS/IMT, is scheduled for May 4, 2010.

The IMT issued its 14th and final report on January 13, 2010. This report found that, since the start of the NSA:

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- The Department has better trained officers and has provided for better supervision of those officers.
- Supervisors are also better trained and equipped to supervise their subordinates.
- Use of force reporting and investigation is now “robust” and continues to improve.
- Police-Community relationships have been strengthened.
- The Department has become more transparent.
- The Department has made gains in ensuring personnel understand their responsibilities and does better at holding them accountable when they fail to live up to those responsibilities.

The same report, however, found the Department still has improvements to make in order to achieve compliance with OPD’s policies and protocols. The PPS/IMT conducted its first quarterly site visit February 8-12, 2010. A first quarterly report, detailing the PPS/IMT’s findings, is anticipated in the near future.

The recent change in monitors, combined with the more focused MOU and a new Chief of Police, bring new opportunities in the Department’s quest to reach compliance with the objectives of the NSA. With the continued support of the City Council, the City Attorney’s Office, and the Plaintiff’s counsel, and given the proper tools and resources the Department needs, staff is confident it can meet its obligations to achieve substantial compliance with the MOU.

PROJECT DESCRIPTION

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

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 monitor 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.

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Training Compliance

- A total of 44 of the 51 tasks require training of at least 95% of relevant personnel.
- 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 32 tasks.
- The Department is in partial actual practice compliance (compliance with at least one but not all of the requirements of the task) with 15 tasks.
- Four tasks are not yet in practice compliance.

Table 1: Actual Practice Compliance

Compliance Status	Number of Tasks
Full Compliance	32
Partial Compliance	16
Not in Compliance	3

Since the last status report, the IMT found OPD to have increased full actual practice compliance by 16 tasks. Tasks not yet in compliance have been halved and those in partial compliance reduced to 14. A list of the tasks added since the last status report follows.

32 tasks are in Full Compliance (16 of these have been added since the last status report).

- Task 1 (IAD Staffing and Resources) – 11/06
- Task 2 (Timeliness Standards and Compliance with IAD Investigations) – 6/09 & 12/09
- Task 4 (Complaint Control System for IAD and Informal Complaint Resolution Process) – 5/09
- Task 8 (Classifications of Citizen Complaints) – 4/09
- Task 9 (Contact of Citizen Complainants) – 2/09
- Task 10 (Procedure Manual for Investigations of Citizen Complaints) – 11/06
- Task 11 (Summary of Citizen Complaints Provided to OPD Personnel) – 3/09 & 10/09
- Task 13 (Documentation of Pitchess Responses) – 4/06
- Task 14 (Investigation of Allegations of MOR Violations Resulting from Lawsuits and Legal Claims) – 11/05
- Task 15 (Reviewing Findings and Disciplinary Recommendations) – 11/06 & 7/09
- Task 17 (Audit, Review and Evaluation of IAD Functions) – 12/05
- Task 19 (Unity of Command) – 2/08
- Task 21 (Members', Employees' and Supervisors' Performance Reviews) – 1/09
- Task 22 (OPD/DA Liaison Commander) – 6/07

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- Task 23 (Command Staff Rotation) – 11/05
- Task 27 (Oleoresin Capsicum Log and Checkout Procedures) – 5/09
- Task 28 (Use of Force – Investigation of Criminal Misconduct) – 7/09
- Task 29 (IAD Investigation Priority) – 7/09
- Task 31 (Officer-Involved Shooting Investigation) – 4/08 & 1/10
- Task 32 (Use of Camcorders) – 10/03
- Task 35 (Use of Force – Witness Identification) – 1/10
- Task 36 (Procedures for Transporting Detainees and Citizens) – 12/08
- Task 38 (Citizens Signing Police Forms) – 4/06
- Task 39 (Personnel Arrested, Sued and/or Served with Civil or Administrative Process) – 12/09
- Task 42 (Field Training Program) – 4/09
- Task 43 (Academy and In-Service Training) – 7/09
- Task 46 (Promotional Consideration) – 9/09
- Task 47 (Community Policing Plan) – 11/08 & 11/09
- Task 48 (Departmental Management and Annual Management Report) – 6/08
- Task 49 (Monitor Selection and Compensation) – 8/03
- Task 50 (Compliance Unit Liaison Policy) – 8/03
- Task 51 (Compliance Audits and Integrity Tests) – 10/05

16 tasks have been found in Partial Compliance since the last report:

- Task 3 (IAD Integrity Tests) – 9/09
- Task 5 (Complaint Procedures for IAD) – 11/09
- Task 7 (Methods for Receiving Citizen Complaints) – 1/09
- Task 12 (Disclosure of Possible Investigator Bias) – 1/10
- Task 18 (Approval of Field-Arrest by Supervisor) – 12/08
- Task 20 (Span of Control) – 12/09
- Task 24 (Use of Force Reporting Policy) – 1/10
- Task 25 (Use of Force Investigations and Report Responsibility) – 1/10
- Task 26 (Use of force Review Board – UFRB) – 1/10
- Task 30 (Firearms Discharge Board of Review) – 1/10
- Task 33 (Reporting Misconduct) – 6/09
- Task 34 (Vehicle Stops, Field Investigation and Detentions) – 2/09
- Task 40 (Personnel Assessment System PAS – Purpose) – 12/08
- Task 41 (Use of Personnel Assessment System PAS) – 12/08
- Task 44 (Performance Appraisal Policy) – 1/10
- Task 45 (Consistency of Discipline) – 7/09

Three tasks are not yet in practice compliance:

- Task 6 (Refusal to Accept or Refer Citizen Complaints) – last assessed 11/08
- Task 16 (Supporting IAD Process – Supervisor/Managerial Accountability) – last assessed 2/09
- Task 37 (Internal Investigations – Retaliation Against Witnesses) – last assessed 3/09

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 PPS/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 continues to conduct probative audits and reviews to ensure compliance with OPD's policies and procedures. Since the last report to Council, OIG has published 16 audits:

- Mobile Data Terminal Traffic (this is not a Task)
- Task 5 (Complaint Procedures for IAD) – specifically Tasks 5.2 – 5.5 and Tasks 5.15 – 5.19, Task 5.20
- Task 6 (Refusal to Accept or Refer Citizen Complaints)
- Task 7 (Methods for Receiving Citizen Complaints) – specifically Task 7.3, Investigating Anonymous Complaints
- Task 8 (Classifications of Citizen Complaints)
- Task 9 (Contact of Citizen Complainants)
- Task 12 (Disclosure of Possible Investigator Bias)
- Task 18 (Approval of Field-Arrest by Supervisor)
- Task 20 (Span of Control)
- Task 24 (Use of Force Reporting Policy)
- Task 25 (Use of Force Investigation and Report Responsibilities)
- Task 27 (Oleoresin Capsicum Log and Checkout Procedures)
- Task 34 (Vehicle Stops, Field Investigation and Detentions)
- Task 35 (Use of Force – Witness Identification)
- Task 44 (Performance Appraisal Policy)
- Task 46 (Promotional Consideration)

The Department will continue to work with the PPS/IMT to identify any issues that affect compliance findings. The Department has continued to build its internal auditing capabilities in an effort to identify problem areas early and implement proactive solutions. These efforts, however, will require a sustained commitment of resources to ensure full compliance.

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The Department has renewed its focus on gaining compliance in the remaining NSA tasks, while still maintaining compliance in areas where success has already been achieved. The Management Assessment Program (a regular meeting facilitated by the OIG) has been restructured to provide a laser focus on compliance in the remaining tasks, and the Department's new Strategic Plan fully incorporates the tenets of the NSA. Lastly, efforts are underway to embed the improvements realized from the NSA into the culture of the Department by shifting to a focus on policy compliance, thereby ensuring compliance efforts extend well beyond the term of the NSA and MOU.

SUSTAINABLE OPPORTUNITIES

Economic: Effective implementation of the provisions of the MOU 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 MOU 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.

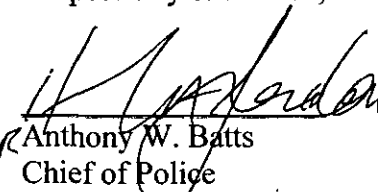
The overall objective of the MOU is to provide expeditious implementation of the best available practices and procedures for police management, which will enhance the ability of the Department to protect the lives, rights, dignity, and property of the community it serves. Areas of focus include supervision, training, and accountability.

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RECOMMENDATION

Staff recommends acceptance of this informational report.

Respectfully submitted,


FOR Anthony W. Batts
Chief of Police

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And

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FORWARD TO
THE PUBLIC SAFETY COMMITTEE:


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