

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK

2005 OCT 13 AM 8:46

To: Office of the City Administrator
Attn: Deborah Edgerly
From: Police Department
Date: October 25, 2005

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 of Delphine Allen, et al, v. City of Oakland, et al, United States District Court Case No. C00-4599 (TEH)**

SUMMARY

This report summarizes the measures implemented by the Oakland Police Department (OPD) in response to the Independent Monitoring Team's (IMT) *Sixth Quarterly Report*, which was filed with the U.S. District Court on May 15, 2005. This report also addresses concerns identified by plaintiff's counsel, articulated in their *Joint Status Conference Statement*, dated August 25, 2005. This report covers the fourth quarter reporting period from July 1, 2005 through September 30, 2005.

This status report comprises a summarized depiction of the Department's compliance status and implementation efforts since the last report on July 12, 2005.

FISCAL IMPACT

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

BACKGROUND

In accordance with Section XIII.I of the Negotiated Settlement Agreement (Agreement), the IMT is required to submit quarterly reports to the Court and all parties (stakeholders) identified in the Agreement. The purpose of these reports is to assess OPD's and the City's compliance with the Agreement and evaluate the status of overall implementation efforts.

The IMT released its most current report, *Sixth Quarterly Report*, to the Court on May 15, 2005. In the report, the IMT commended the OPD and attributed the recent improvements in Agreement reform efforts to the leadership of the Department's new Chief. The IMT further stated that Chief Tucker has "...infused the Department's compliance efforts with new levels of energy and direction." "He has been able to build upon the efforts initiated by the City Administrator, Deborah Edgerly..." The IMT also commended the Department on its Management Assessment Program (MAP) and the progress attained on the Discipline Matrix. The IMT identified the Department's challenges, stating internal reviews and investigations continue to be an area of difficulty. The Team also reported significant concerns with Internal Affairs Division (IAD) investigations, as identified in the last quarterly status update.

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On August 25, 2005, the Department appeared in US District Court for a subsequent Status Conference to provide Judge Thelton Henderson with an update on the Department's overall compliance status since the May 18, 2005 court appearance.

KEY ISSUES AND IMPACTS

General Status of Compliance

Table 1: Compliance Progress Summary

TASK STATUS	NUMBER OF TASKS*
Tasks Due (to date) and as of June 30, 2005	49 of 52*
Progressing Without Concern	2
Not in Compliance	27
Not in Full Compliance (in policy or training compliance)	17
In Full Compliance (this reporting period)	4

*Note that the number of Tasks totals 50 rather than 52. This is because Tasks 17 and 52 are not included in the tracking; Task 17 is a summary Task with no associated actions and Task 52 is housekeeping.

Twenty-seven Tasks due were not in compliance with policy, training, or implementation as of June 30, 2005. The 27 Tasks not in compliance are primarily associated with four policies: the *Discipline Matrix* and its associated *Training Bulletins*; Departmental General Order (DGO) M-3: *Complaints Against Departmental Personnel or Procedures*; the *Internal Affairs Division Policy and Procedures Manual (IAD Manual)*; and the *Use of Force Policies (K-3, K-4, K-4.1 and related Training Bulletin)*. These policies collectively represent 25 Tasks.

The provisions of four Tasks have been implemented and are in full compliance this reporting period and 17 Tasks are partially complete. The Department has exceeded substantial training compliance on all 21 published policies. These policies represent the achievement of policy compliance on over 20 Tasks.

Audits and Reviews

The Audit and Inspection Unit conducted informal reviews on various Agreement tasks. These reviews were designed to reveal any deficiencies in the Department's current practices and enable the Chief and Command Staff to take immediate corrective action. The following reviews were conducted during the current calendar year:

- ***Stop Data Collection***

Staff conducted an analysis of the stop data forms submitted for one month and compared that data to the number of citations and stops recorded in the Computer Aided Dispatch (CAD) system. The data showed a dramatic increase in the submission of forms and the numbers were consistent with citations written and stops documented in the CAD system.

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- ***Vice/Narcotics Arrest Approval***

A sample of narcotics arrests were reviewed for compliance with Department General Order M-18, *Approval of Field Arrest by Supervisor*. It was discovered that supervisors were approving arrests at the scene without clear documentation. New communications procedures, issued via Special Order, require Supervisors to confirm their presence and their approval or disapproval of arrests via the mobile data terminal.

- ***Sergeant Response to Scene of Use of Force/ Use of Force Report Review***

Staff conducted a review of a sample of Use of Force Reports. The audit determined supervisors were responding to the scene of use of force incidents and were utilizing Settlement Agreement requirements.

- ***Citizens Signing Police Forms***

Staff reviewed a sample of crime reports and attendant statements signed by citizens. It was discovered officers were somewhat complying with policy and the Settlement Agreement. Officers were failing to have citizens sign both their name and date on the diagonal line. This review led to a revision and clarification of Departmental policy.

Accomplishments

During this reporting period the Department completed a number of projects. These accomplishments include, but are not limited to, those summarized below.

- ***Creation of A New Compliance Plan – the 12/31 Plan***

A new compliance plan was developed to include systems and controls that allow users to properly implement and document compliance. In addition, compliance assessors were identified for each task. These assessors will be responsible for assessing compliance regarding specific Agreement tasks. Compliance assessors, assisted by OIG staff, are tasked with identifying the relevant policies and procedures, systems, processes, and internal controls necessary to ensure compliance and successful audits of Tasks.

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

The last status report discussed the creation and implementation of MAP. These MAP meetings continue to reinforce the importance of the Agreement to the organization. The main areas of review/focus are: stop data, community meetings, uses of force, internal investigation, arrest approvals, performance appraisals, training compliance, and policy. These weekly meetings enhance managerial accountability by using “real time” data reporting. Deficiencies are identified and commanders are directed to provide explanations and develop solutions to counter said deficiencies.

Status Conference with Judge Thelton Henderson

On August 25, 2005, the City Administrator, the Chief of Police, and executive Police Department personnel attended a Status Conference Hearing with Judge Thelton Henderson. During the Status Conference Hearing, Judge Henderson noted:

- That OPD is making good progress in reforming the department.
- He is “completely satisfied” with police Chief Wayne Tucker’s commitment to “changing the culture of the department and implementing the requirements of the legal settlement that resolved the class-action lawsuit arising from the scandal.”
- He is “by and large pleased” with the department’s direction under new Police Chief Wayne Tucker.
- There will be “bumps in the road and that we should aspire not to be one of those bumps,” and that he is the truck that will drive over the bumps.
- Believes responsible personnel must be held accountable for non-compliance - including holding him/her in contempt.
- This case began in February of this year when he started “screaming”. He is measuring things from that point and he thinks the Settlement’s objectives will be achieved.

During the hearing, the Plaintiffs’ Attorneys remarked on their concerns regarding OPD’s compliance with the terms of the Agreement. The Attorneys believe:

- The Internal Affairs provisions of the Agreement were ignored and violated over the last two years, e.g., no case numbers assigned to many files, anonymous phone complaints were not taken.
- There should be more meetings with the court.
- There should be additional Independent Monitor Team and court supervision.
- Consideration should be given to utilizing a special master for Internal Affairs.
- There should be more updates from the Department.
- There have been capricious violations of the Agreement; and are
- Most concerned about solving the future problem. The Plaintiffs’ Attorneys don’t want to focus on the total number of cases, but on those who made the decision(s) to implement (or not implement) certain NSA conditions. Identify the responsible personnel and hold them accountable for negligence, etc. They believe the impact of such actions will aid in changing the culture; that without this acknowledgement employees will think it’s “business as usual.”

The next Status Conference Hearing is scheduled for Thursday, December 8, 2005 at 10:00 am. -- in U.S. District Court, 450 Golden Gate Avenue, San Francisco, in the judge’s chambers, Courtroom 12, 19th Floor. The general public may attend the public portion of the status conference hearing at 10:30 am.

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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, judgment pay-outs - - which result in downbeat portrayals of Oakland by the media, elicit adverse public reactions, and have a negative impact on the Oakland economy.

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 objectives of the Agreement are to provide for the expeditious implementation, initially with the oversight of an outside monitoring body, of the best available practices and procedures for police management in the areas of supervision, training and accountability mechanisms, and to enhance the ability of the Oakland Police Department to protect the lives, rights, dignity and property of the community it serves.

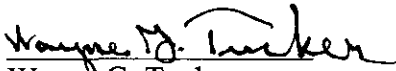
DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or Senior Citizen access issues contained in this report.

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,


Wayne G. Tucker
Chief of Police

Prepared by: Paul Figueroa/Carolyn F. Marsh
Office of Inspector General
Office of Chief of Police

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:


Office of the City Administrator

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