

FILED
OFFICE OF THE CITY CLERK
OAKLAND

NOV 29 PM 3:09

CITY OF OAKLAND

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Anne E. Kirkpatrick
Chief of Police

SUBJECT: OPD ATF MOU Supplemental Report

DATE: November 27, 2018

City Administrator
Approval

Date

11/29/18

RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The Bureau Of Alcohol, Tobacco, Firearms, And Explosives (ATF) And The Oakland Police Department (OPD) For The Purpose Of Reimbursement Of Overtime Salary And Other Costs Related To OPD Participation In The ATF Taskforce, For The Period Of July 27, 2016 Through September 30, 2021.

REASON FOR THE SUPPLEMENTAL REPORT

Ordinance No. 13457 C.M.S., passed June 29, 2017, requires that for MOUs with federal agencies, OPD submit a "proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission" (PAC) before execution of said agreement. OPD brought the proposed ATF MOU to the November 26, 2018 PAC meeting.

Accompanying this report is the MOU approved by the ATF for participation in the ATF Taskforce (**Attachment A**) and the resolution recommended by staff (**Attachment B**). OPD has made modifications to the staff-recommended resolution based upon feedback from the PAC. However, the PAC has proposed further changes to the resolution and MOU not recommended by staff. These further PAC recommendations have been included in an alternative resolution (**Attachment C**).

PAC Recommendation #1: Limit the Authority of the City Administrator and Specify the MOU.

The PAC requested that staff modify the following language common to many resolutions recommended for City Council approval: *FURTHER RESOLVED: That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, modify, extend and/or amend the MOU without returning to the City Council.* Staff have agreed to this recommendation; the new recommended resolution (**Attachment B**) has the following language: *FURTHER RESOLVED: That the City Administrator or designee is authorized to execute the MOU attached to the report accompanying this resolution without returning to the City Council.*

Item: _____
Public Safety Committee
December 4, 2018

PAC Recommendation #2: Require in the MOU that Federal Agency Personnel Comply with Certain City of Oakland and State of California Policies

The PAC requested OPD contact the ATF to ask for additional language in the ATF Taskforce MOU. The PAC is asking for language which would compel ATF agents to also comply five new and pending City of Oakland and State of California policies:

- California Senate Bill (SB) SB 54 (California Values Act) ¹;
- SB 31 (California Religious Freedom Act: state agencies: disclosure of religious affiliation information)²;
- The City's pending Sanctuary City Ordinance³;
- OPD Department General Order (DGO) M-17 (establishes OPD procedures governing the function of the Intelligence Division)⁴; and
- DGO M-19 Sections III and VIII (A, C) (OPD policy on prohibitions regarding racial profiling and other bias-based policing) ⁵.

Attachment C to this report is an alternative resolution that includes and requires this language. ATF personnel have explained to OPD that they will request that ATF legal counsel consider this MOU modification request. However, ATF personnel have also explained to OPD that such requests are unlikely to be supported as the federal agency uses the same language for MOUs with many agencies across numerous states and jurisdictions; ATF does not generally modify their MOUs for different agencies that want to participate with the ATF and receive resource support.

The PAC voted at their November 26, 2018 meeting to only recommend approval of the ATF Taskforce MOU with these additional policy restrictions for ATF personnel. OPD believes that the Taskforce provides critical investigative support greatly needed by OPD – and therefore recommends that the City Council approve the resolution authorizing the MOU in its current form (**Attachment B**) - despite the different recommendation from the PAC. The ATF does not need permission by OPD to operate within the city; however, violent crime and illegal firearms investigations are better achieved through law enforcement collaboration and information sharing.

¹ SB 54 – California Values Act (Cal. Gov. Code §7284 et seq.) curtails use of state and local resources from engaging in deportations and create safe spaces, including at schools, health facilities, and courthouses - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB54

² SB 31 – California Religious Freedom Act (Cal. Gov. Code §8310.3 et seq.) prohibit a state or local agency or a public employee acting under color of law from providing or disclosing to the federal government personal information regarding a person's religious beliefs, practices, or affiliation, as specified, when the information is sought for compiling a database of individuals based on religious belief, practice, or affiliation, national origin, or ethnicity for law enforcement or immigration purposes - https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB31

³ Oakland Sanctuary City Ordinance (code pending)

⁴ <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak063011.pdf>

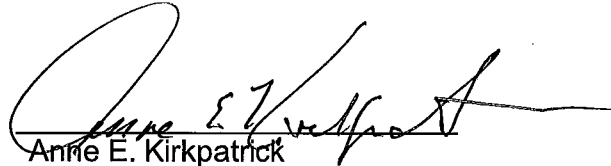
⁵ <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak032293.pdf>

ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The Bureau Of Alcohol, Tobacco, Firearms, And Explosives (ATF) And The Oakland Police Department (OPD) For The Purpose Of Reimbursement Of Overtime Salary And Other Costs Related To OPD Participation In The ATF Taskforce, For The Period Of July 27, 2016 Through September 30, 2021.

For questions regarding this report, please contact Lieutenant James Beere, Felony Assault Section, CID, Bureau of Investigations, at (510) 238-3728.

Respectfully submitted,



Annie E. Kirkpatrick
Chief of Police
Oakland Police Department

Reviewed by:
Timothy Birch, Police Services Manager I
OPD, Training Division, Research and Planning

Prepared by:
Bruce Stoffmacher, Legislation Manager
OPD, Training Division, Research and Planning

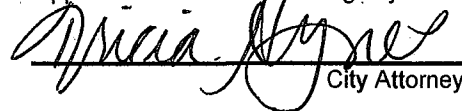
Attachments (2):

- B** – Staff-Recommended Resolution Authorizing a MOU between the ATF and OPD
- C** – Alternative PAC-Recommended Resolution Authorizing a modified ATF OPD MOU

Item: _____
Public Safety Committee
December 4, 2018

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality


City Attorney

2018 NOV 29 PM 3:09

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (ATF) AND THE OAKLAND POLICE DEPARTMENT (OPD) FOR THE PURPOSE OF REIMBURSEMENT OF OVERTIME SALARY AND OTHER COSTS RELATED TO OPD PARTICIPATION IN THE ATF TASKFORCE, FOR THE PERIOD OF JULY 27, 2016 THROUGH SEPTEMBER 30, 2021

WHEREAS, the mission of ATF is to protect communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products; and

WHEREAS, Oakland continues to suffer from some of the highest per-capita crime rates of any large U.S. city, with the following levels of crime for the year 2017:

- 72 homicides;
- 2,807 aggravated assaults (including 277 shootings with injuries and 192 shooting related to an occupied home or vehicle); and
- 2,585 robberies (including 980 with firearms);
- 151 cases of arson; and

WHEREAS, ATF has resources that can help OPD investigate violent crimes involving firearms as well as suspected criminals who use stolen firearms and or traffic in firearms used for violent crime; and

WHEREAS, OPD has limited resources to investigate crimes of suspected criminals involving the use of firearms; and

WHEREAS, ATF is prepared to support OPD by investigating local firearm-involved violent crimes; and

WHEREAS, ATF and OPD can best solve violent firearm-related crimes in Oakland through collaborations that combine resources and knowledge; and

WHEREAS, OPD officers assigned to the ATF Taskforce shall adhere to Taskforce policies and procedures, as well as OPD policies and procedures; and

WHEREAS, ATF and OPD previously signed an MOU in July 27, 2016 executing the MOU through September 30, 2021; and

WHEREAS, Article V, Section 504(l) of the City Charter requires that the City Council authorize the City Administrator or designee to enter into an agreement between the City and other agency or organization; therefore, be it

RESOLVED: that any reimbursements for overtime expenses made by the ATF to OPD shall be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03; and be it

FURTHER RESOLVED: that the City Administrator is authorized to accept and appropriate any reimbursements for overtime expenses without returning to the City Council; and be it

FURTHER RESOLVED: that the MOU authorizing participation between the ATF and OPD shall have a duration period of July 1, 2016 through September 30, 2021, unless either party wishes to nullify this MOU with 60 days' written notice; and be it

FURTHER RESOLVED: That the City Administrator or designee is authorized to execute MOU attached to the accompanying report without returning to the City Council; and be it

FURTHER RESOLVED: That in accordance with Article IV, Section 401(6) of the City Charter, the MOU authorized by this resolution shall be approved by as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, GIBSON MCELHANEY AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 NOV 29 PM 3:09

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Approved as to Form and Legality

Amelia Wynnes
City Attorney

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES (ATF) AND THE OAKLAND POLICE DEPARTMENT (OPD) FOR THE PURPOSE OF REIMBURSEMENT OF OVERTIME SALARY AND OTHER COSTS RELATED TO OPD PARTICIPATION IN THE ATF TASKFORCE, FOR THE PERIOD OF JULY 27, 2016 THROUGH SEPTEMBER 30, 2021

WHEREAS, the mission of ATF is to protect communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products; and

WHEREAS, Oakland continues to suffer from some of the highest per-capita crime rates of any large U.S. city, with the following levels of crime for the year 2017:

- 72 homicides;
- 2,807 aggravated assaults (including 277 shootings with injuries and 192 shooting related to an occupied home or vehicle); and
- 2,585 robberies (including 980 with firearms);
- 151 cases of arson; and

WHEREAS, ATF has resources that can help OPD investigate violent crimes involving firearms as well as suspected criminals who use stolen firearms and or traffic in firearms used for violent crime; and

WHEREAS, OPD has limited resources to investigate crimes of suspected criminals involving the use of firearms; and

WHEREAS, ATF is prepared to support OPD by investigating local firearm-involved violent crimes; and

WHEREAS, ATF and OPD can best solve violent firearm-related crimes in Oakland through collaborations that combine resources and knowledge; and

WHEREAS, OPD officers assigned to the ATF Taskforce shall adhere to Taskforce policies and procedures, as well as OPD policies and procedures; and

WHEREAS, ATF and OPD previously signed an MOU in July 27, 2016

Attachment C

executing the MOU through September 30, 2021; and

WHEREAS, Article IV, Section 504(l) of the City Charter requires that the City Council authorize the City Administrator or designee to enter into an agreement between the City and other agency or organization; therefore, be it

RESOLVED: that the MOU shall include the following language: "The ATF Special Agents assigned to the ATF Taskforce in Oakland agree to adhere to the following state or local laws, policies, or procedures, when performing as part of the Oakland Taskforce, unless existing ATF policies or procedures are more restrictive:

* SB 54 – California Values Act (Cal. Gov. Code §7284 et seq.)

* SB 31 – California Religious Freedom Act (Cal. Gov. Code §8310.3 et seq.)

* Oakland Sanctuary City Ordinance (code pending)

* Oakland Police Departmental General Order M-17, Section V "Professional Standards"

* Oakland Police Departmental General Order M-19, Sections III and VIII (A, C); and be it

FURTHER RESOLVED: that any reimbursements for overtime expenses made by the ATF to OPD shall be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03; and be it

FURTHER RESOLVED: that the City Administrator is authorized to accept and appropriate any reimbursements for overtime expenses without returning to the City Council; and be it

FURTHER RESOLVED: that the MOU authorizing participation between the ATF and OPD shall have a duration period of July 1, 2016 through September 30, 2021, unless either party wishes to nullify this MOU with 60 days' written notice; and be it

FURTHER RESOLVED: That the City Administrator or designee is authorized to execute MOU attached to the accompanying report without returning to the City Council; and be it

FURTHER RESOLVED: That in accordance with Article IV, Section 401(6) of the City Charter, the MOU authorized by this resolution shall be approved by as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, GIBSON MCELHANEY AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California