



**CITY OF OAKLAND
OAKLAND POLICE COMMISSION**

FINAL & ADOPTED

Meeting Minutes

Wednesday, February 28, 2018

6:30 PM

City Hall, 1 Frank H. Ogawa Plaza, Council Chamber
Oakland, CA 94612

I. Call to Order
(Thomas Lloyd Smith)

The meeting started at 6:36 p.m.

II. Roll Call and Determination of Quorum
(Thomas Lloyd Smith)

Commissioners present: José Dorado, Ginal Harris, Regina Jackson, Mike Nisperos, Edwin Prather, and Thomas Smith. Quorum was met.

Alternate Commissioner present: Andrea Dooley.

Alternate Commissioner absent: Maureen Benson.

Commissioners absent: Mubarak Ahmad.

City staff present: Stephanie Hom, Interim Deputy City Administrator Allison Dibley, Deputy City Attorney, City Attorney's Office

III. Open Forum
Thomas Lloyd Smith will call the public speakers.

No public comment.

IV. Discussion – Oakland Police Department Report

Chief of Police Anne Kirkpatrick will provide an update on the following: Internal Affairs Division Investigation and Discipline Flow Chart, Portable Digital Recording Devices policy including release of recordings to the public, discipline policy and any revisions under consideration, discipline matrix, "U-visa" policy concerning certification of applications (nonimmigrant visas for victims of crimes willing to assist law enforcement and government officials in the investigation or prosecution of the criminal activity) and the Citizen's Police Academy,

a. Discussion

Captain Holmgren, Commander of the Criminal Investigation Unit, presented on Portable Video Management System - PDRD which is Item 4(c) in the Agenda Packet. He reported that OPD started using the cameras (PDRDs) approximately ten years ago. The technology is governed under Departmental

General Order I-15.1. The policy is online and available to our communities. He offered to respond to questions by the commissioners.

G. Harris asked if the cameras are turned in daily and if so, are they monitored. Captain Holmgren replied that the officers are required to download their PDRD at the completion of their shift and if unable to do so, they need to do this immediately following the next shift. G. Harris inquired if they are required to immediately turn them on when they do a routine police stop? Captain Holmgren stated yes, in a detention, by policy, officers are required to activate their PDRD.

R. Jackson asked if there is any time when it is substantiated for someone to turn off their camera. Captain Holmgren said, yes and gave options when officers deactivate their camera, such as when they are away from an incident and they are talking about tactics, maneuvers, taking a statement to make that statement separate, etc.

J. Dorado asked if the sound is also integral with the video and is the video a 30-second advance. Captain Holmgren said that it does pick up video 30 seconds' prior but there is no audio in that 30 seconds. The device itself is worn on the center of their chest and has a significant field of view and technology is increasing to enhance some light (can be challenging in low light situations) but it is a piece in an investigative process and does not capture everything, it does not zoom where the officer goes.

M. Nisperos referenced page 5 of 16, subsection (c)(2) change deactivate not deactivated and above under paragraph (b) in the next sentence change barring to barring.

Chief Kilpatrick stated that the next topic will be U-Visas (Universal Visas) which is associated with our immigrant community. Sgt. Beere gave the presentation. He reported that it is an important tool that is used to solve murders, rapes, and very serious crimes. To qualify for it a direct or indirect victim has to fall under a qualifying crime, suffered substantial abuse as a result of that crime, and provided information regarding the criminal activity and helpful for the investigation. The victim must also be admissible to the U.S. based on his or her criminal history. The victim is allowed to remain and work in the U.S. for four years and can apply for citizenship within three years. While on U-Visa status, the victim has an on-going duty to cooperate with law enforcement regarding the investigation and cannot refuse to assist or refuse to prosecute. Annually there is a 10,000 cap nationwide. OPD ranks second in California in terms of volume and approvals of U-Visas. Denials are reviewed by Captain Holmgren. Denials are not reported to the Federal government or any federal law enforcement agency. The applications are sent back to the applicant or the applicant's attorney only and they can refile again. We do not log them to be reported. The log is strictly held internal and for tracking purposes within the police department. OPD's policy is that they do not assist in criminal investigations related to immigration status. He offered to respond to questions by the commissioners.

A. Dooley asked what constitutes substantial from the viewpoint of accessing whether a victim has suffered a substantial enough injury to qualify. Sgt. Beere said that a substantial injury would be documented bruising through PDRD or in the police report or medical records stating that they were treated by an emergency room or physician or submit psychological reports – anything that proves that they suffered but it must have some type of treatment. She asked if financial crimes qualify. Sgt. Beere stated that financial crimes do not qualify and usually crimes against persons. She asked what measures have been taken to ensure that this does not reoccur. Sgt. Beere said that he is held accountable and is the one point contact

and is supervised on two separate levels and the final say before denial is sent is through Captain Holmgren. If still a discrepancy, the applicant/attorney can resubmit and go all the way up to the Chief of Police.

R. Jackson asked, "How is it affirmed or confirmed when someone is victimized and it was in fact gang related?" Sgt. Beere said the clear majority of them are out right admitted by the individual. R. Jackson asked when they are victimized by somebody who is in a gang and it is said gang related, does that taint the victim Sgt. Beere said whether they are a gang member or not it does not hold them from applying for a U-Visa. The sole purpose is that they cooperate with the investigation.

G. Harris asked if anyone has ever been arrested for applying for a U-Visa. Sgt. Beere said not in his experience.

J. Dorado asked about the essence of the mistake that was made. Chief Kirkpatrick explained that the public defender contacted her and pointed it out that the law was applied incorrectly. OPD realized that they had been applying the law incorrectly, so OPD took steps to correct the problem and added two layers of authority review U-Visa applications. OPD approves the application, then the federal government decides whether to issue the U-Visa.

R. Jackson asked for the rationale behind the 10,000 cap nationwide. Sgt. Beere said that he is not an expert on the federal level but he believes that it has to do with the actual numbers the Federal government projects that the number is entirely based on how they allocate visas on the larger picture across the spectrum of visas.

J. Dorado asked for clarification of what mistake was made. Sgt. Beere said the mistake was denying people who were suspects in criminal cases, but not convicted. Being a suspect in a criminal case does not preclude applicants from being considered for a U-Visa. Chief Kirkpatrick clarified that the emphasis was whether we were looking at some of their criminal history but it was whether they met the victim category and we are cooperating.

Chief Kirkpatrick said that Lt. Todd Mork will present the discipline process and how it goes through the department. Lt. Mork reported that the Internal Affairs Division ("IAD") is not responsible for doing the discipline; we track it as part of each case as well as track it in our file system when discipline is imposed and it stays in the file. IAD is separate and investigates the cases. He reviewed Item 4(a) in the Agenda Packet: IAD Investigation Flow Chart and the Disciplinary Process Flow Chart. He also reviewed Item 4(b) in the Agenda Packet: Department discipline policy and the Discipline Matrix. He offered to respond to questions by the commissioners.

G. Harris asked, How long is this discipline process typically? Lt. Mork reviewed the various guidelines governing the appeal process, Skelly Hearing, etc. G. Harris asked about a subject's past (5 year) discipline and current performance and what is the significance of the 5 years; if a subject committed a crime six years ago, is it not looked at? Lt. Mork said no, it is not looked at in accordance with the California Government Code. G. Harris asked if the officer is paid while the disciplinary process is going on. Lt. Mork reported on various disciplines and what are overturned, with pay and without pay - it depends on a case by case basis by the arbitrator. G. Harris asked if the Commission is written into the disciplinary process. Lt. Mork said this is an internal process and he is not sure now where the Commission sits.

A. Dooley asked if there is there any intent to revise the disciplinary procedure and beyond amending it to include the Commission process. Chief Kirkpatrick said that she has an intent to speed up the time of the investigatory path, which is where the time delay comes in. The end game for us is to be sure that discipline is imposed before the end of one year from the time of the complaint or discipline is barred by law. I would like to see the processes speed up but a lot of that has to do with how many investigators we can put into IA to do the work.

R. Jackson asked what would your goal be? Chief Kilpatrick said the process is typically this long because of due processes. Discipline needs to be swift and fair. The goal of discipline is corrective behavior.

Chief Kilpatrick's next topic on the agenda is about the Citizen's Police Academy. She reported that the next class for the Citizen's Police Academy begins in April. The application to apply for that Academy is on the OPD website. The hours are 6:00 p.m. – 9:00 p.m. (9 Mondays). The email you would go to get that application is cpacoordinator@oaklandnet.com. The telephone number is (510) 238-7683.

A. Dooley asked if another Academy will be held this year. Chief Kilpatrick said she will report back with that information.

G. Harris asked what the Academy entails? Chief Kirkpatrick said she has hosted various academies. It is an introduction to the basic things we do; people do ride-alongs, how cameras work, give exposure to laws; over view what it involves to be a police officer or a dispatcher. We show the canine dogs. We also get to hear from the community, etc.

M. Nisperos asked Chief Kilpatrick if she would object if commissioners drop in and attend a class based on their convenience. Chief Kirkpatrick said that she is open to that; let her know when you are coming and we will let you also see our academies and even our advanced training classes.

b. Public Comment

Korey T. Gibson applauded the Commissioners. It is very important that the Oakland community have open dialogue with all people. He mentioned that he was a victim of crime and asked commissioners to review/evaluate finding, etc. for victims of crime.

Henry Gage regarding questions for OPD. (1) PDRD policy – sounds as if either Capt. Holmgren and/or the homicide commander are the two who make the final decision as to whether a PDRD video of a currently open criminal investigation is released to the public. Are there any publicly available appeals processes in considering those decision cases especially in cases given with large amounts of public interest. (2) Pending legislation that was referenced accelerating a timeline to the release of videos.

A. Dooley regarding PDRD policy asked what are the criteria of private limited sharing of video?

Michael Tigges asked a question for Chief Kilpatrick regarding Mayor Schaaf and ICE raids. Would you have given the warning?

John Jones III regarding asked a question regarding bodycameras, U-Visas and officer discipline.

Mariano Contreras regarding corrective behavior and U-Visas

Antonio Abarca regarding U-Visas and the Latino community being under attack and been singled out. He also discussed ways to build trust between the police department and the community.

V. Action – Approval of Draft Commission Meeting Minutes for February 14, 2018

a. Discussion

No discussion.

b. Public Comment

Henry Gage regarding meeting procedure.

c. Action

MOTION to approve the minutes of February 14, 2018 (M. Nisperos) and seconded (J. Dorado). The motion passed. The vote was 5-0-1, with R. Jackson abstaining.

VI. Discussion – Chairperson’s Appointment of Ad Hoc Committees

T. Smith asked Deputy City Attorney A. Dibley if we are authorized and is it legally compliant for us to put an alternate commissioner on the ad hoc committees for the Oakland Police Commission? A. Dibley stated that there does not appear to be any legal prohibition to alternates being members of ad hoc committees.

Policy and Procedure Ad Hoc Committee:

T. Smith said that he will serve and appointed Commissioner Prather and Alternate Commissioner Dooley.

Personnel Hiring and Recruiting Ad Hoc Committee:

T. Smith said that he will serve and appointed Commissioner Harris and Commissioner Nisperos.

Community Outreach Ad Hoc Committee:

T. Smith appointed Commissioner Jackson and Commissioner Dorado.

Discipline Ad Hoc Committee:

T. Smith appointed Commissioner Harris, Commissioner Prather, and Commissioner Dorado.

a. Discussion

R. Jackson thanked T. Smith for the appointment and said that she is also interested in serving on the Policy and Procedure Committee and said that she can contribute significantly. T. Smith thanked her.

A. Dooley asked what is this committee if not the rotating disciplinary committee. T. Smith stated because of the importance of discipline and the charge of the Oakland Police Department we wanted a group of individuals who are going to research the policies to see areas where we can recommend reforms and make sure these reforms are brought back to the broader Commission. Make sure that we are

on the ground and running even before we are called to start the rotating disciplinary committee. A. Dooley thanked him for including her on this committee. She mentioned that all three of us are mayoral appointees and to consider if there is an adequate distribution of mayoral and community appointees on each of the ad hoc committees. T. Smith said that it is a valid question to ask. All policy and procedure matters are going to require the full attention of the board so those matters will circulate back and get full attention.

R. Jackson inquired about M. Ahmad and M. Benson. T. Smith said that he held off on that since neither of them are in attendance this evening.

M. Nisperos inquired about the relationship between the full Commission and the ad hoc committees. T. Smith said that the reason we are having three or less members per committee is because we must make sure that we do not have any Brown Act violations between meetings and (1) we want to make sure that we are moving things forward and that we have people to do that and (2) then bring that dialogue back to the agenda to have a broader discussion. Also, that the dialogue is public when it comes to having everyone being able to hear what things are being brought forward/discussions so that the public can participate too.

E. Prather recommended two potential committees: (1) Budget. We have about 90 days in which a budget is required. (2) Measure LL legislation and revisions. T. Smith said Measure LL will be included in the Policy and Procedure Committee.

M. Nisperos recommended budget training (City Budgets and putting together our own budget).

b. Public Comment

No public comment.

VII. Action – Executive Director Recruiting for the Community Police Review Agency

a. Discussion

T. Smith asked S. Hom to confirm the status of the application for the Executive Director position. S. Hom reviewed/reported that the statement in the Agenda is accurate. She will see that the Job Application/Job Classification Description is posted on the website. The question asked of her offline was: What is the status of the recruitment? She stated that she doesn't believe that this Commission has taken any action to initiate a request for recruitment. That is why this item is on the agenda.

M. Nisperos asked that once the request is made, what is the timeline? S. Hom stated that there is an extensive vacancy list but typically these take 6-9 months from beginning to end. G. Harris – how can we alleviate that process? S. Hom will bring it to the attention of the Human Resources Director; she then spoke to the general processes.

b. Public Comment

No public comment.

c. Action

MOTION that we initiate the process of recruiting and hiring a permanent Executive Director and that we ask the City Administrator's Office to expedite the process given the unique nature of our demands (M. Nisperos) and seconded (J. Dorado). The vote was 5-0-1, with E. Prather abstaining and Commission Ahmad was absent.

VIII. Discussion – Analyst II Recruiting for the Oakland Police Commission

a. Discussion

T. Smith asked S. Hom to give an update which she provided. She asked the Commission how they would like to proceed.

Since T. Smith has established the Personnel Hiring and Recruiting Ad Hoc Committee, S. Hom said that they can contact her and schedule a meeting to answer questions, etc. in this process. S. Hom said she can make herself available evenings except for Council and Police Commission meeting nights. T. Smith thanked her and said that works for the Commission.

MOTION that to authorize the Personnel Hiring and Recruiting Ad Hoc Committee to act on behalf of the full Commission to do what is needed to fill the vacancy position of Analyst II (M. Nisperos) and seconded (G. Harris). The motion passed. The vote was 6-0-0. Commission Ahmad was absent.

b. Public Comment

No public comment.

IX. Discussion – Draft Enabling Ordinance

a. Discussion

Deputy City Attorney A. Dibley reported that as listed on the posted agenda for the March 6 City Council meeting, it does say that it will be a first reading of the Enabling Ordinance. She spoke with the City Clerk today and she said it will be changed tomorrow in the Rules Committee. What happens on March 6 will not be a first reading instead there will be discussion about the Enabling Ordinance at the City Council meeting and her understanding is that at that point in time, the Enabling Ordinance will be submitted to the Commission. From that point, the clock begins ticking in terms of the time the Commission must respond.

E. Prather asked what is the mechanism for this Commission (Policy and Procedure Ad Hoc Committee) to make its recommendations and suggested edits to the City Council. A. Dibley reported that the City Charter is silent on the mechanism for submitting comments, questions or suggested revisions. The Commission could decide to do something in writing - to make a presentation to the City Council assuming the Commission is properly agendaized. E. Prather asked if there is an expectation of how that response will come, that she is aware of. A. Dibley said that she is not aware of any.

b. Public Comment

Michael Tigges regarding the results of nine months of meet and confer.

Mary Vail regarding ad hoc committees and submission of public comments on certain matters. The Commission's input will be critical and carefully considered in implementing the Enabling Ordinance.

X. Recess (5 minutes)

XI. Discussion – U.S. Immigration and Customs Enforcement (“ICE”)

a. Discussion

E. Prather proposed potential strategies for reducing confusion and disruption caused by Immigration and Customs Enforcement involvement in immigrant communities.

He reported that our Mayor is now on national news and on notice because of notice of potential ICE raids. ICE responded and said that they are doing raids and tried to color that by saying that some people were involved in criminal activity. This is a problematic for us, especially the police department. He reported that the ACLU of Northern California is saying that ICE is not just limiting itself to immigrants involved in criminal activity; they are aggressively intimidating immigrants in their home and they are using racial profiling in public.

What can we do to help get the word out to our non-English speaking communities? How can we help? One of the charges that I feel that this Commission is responsible for is improving the confidence in the Oakland Police Department with its citizenry. One of the issues that came up at our last meeting in open session when we talked to the Chief Kilpatrick about ICE's propensity to misidentify themselves as police officers. That is a significant issue not only in our community, but also statewide and nationwide. ICE has decided to take on cities with sanctuary laws – California is a sanctuary state.

Our issue in Oakland is that anytime you think of an ICE agent, see pictures in the Chronicle, you see on the back of the jacket or vest – you see “Police” first and then ICE. This is very different from federal agents – identified like FBI, ATF, etc. ICE wants to identify themselves as police. When they come into contact to explain to people because it takes too long, so they say we are the police. It places a chilling effect in our immigrant communities. It is a big problem because they can't differentiate between police or ICE.

E. Prather did some research and said that Los Angeles is the only city to have actively sent a letter to ICE saying please stop identifying yourself as the police. San Francisco in talking to their police commission is currently waving its options and doing the same. There is also a bill that was introduced in April 2017 - a Democrat from New York introduced a bill for ICE to forbid ICE from identifying itself as police. It is stuck in in the judiciary committee. The problem is nationwide and it happens everywhere. ICE is abusing its power by identifying themselves as police. They do it on purpose to create the confusion.

How we could approach it is we could recommend to the City Council that they write a letter to ICE. He suggested that we need to make the issue more public. The Mayor has asked that the citizens of Oakland reach out to different legal agencies and resources; nonprofits to know your rights, etc.

T. Smith asked for input from commissioners. R. Jackson said that she is proud of

our Mayor to take this courageous position. She is proud to be on the Ad Hoc Community Outreach Committee. She applauds E. Prather for raising this important issue. She recommends that we take a stand and write a letter, etc.

J. Dorado said she was gratified to see on the news when the Mayor was asked if she would go to jail and she said she would. That is the kind of attitude we need to have; whatever needs to be done to protect the undocumented and vulnerable even if the letter doesn't get read, or doesn't have much impact. We should make that statement. That is the job of the Commission and the job of the residents of this great city.

A. Dooley agrees that we need to figure out how we as the Commission acting within our mission can impact this issue. Under our mission, how do we ensure that the police department's policies, practices, and customs are conforming to national standards of constitutional policing? What are our immigrant communities feeling about those policies, customs and practices with respect to this issue? A strong opportunity for us is when we get to the point where we are having our public listening and we are hearing what our communities are saying – are the policies and practices of the Oakland Police Department doing everything that they can to support the rights, both constitutional and human rights, of our immigrant brothers and sisters in Oakland.

M. Nisperos joined the other commissioners in applauding the efforts in bringing this issue. He struggles to see what is the mechanism by which we can be of assistance in this matter. How effective it would be to write a letter to the Mayor saying that we applaud what you did because it helps to inform the citizens that our Oakland Police are not involved in this activity. I am not sure that it did. He still applauds her efforts. We need to find some nexus to our mission to remain cogent. Once we do, have T. Smith call a press conference and speak on our behalf.

E. Prather's view is taking a very expansive reading and definition of what our role is here – one of our roles is to improve in both attack and defend the Oakland Police Department. By ICE identifying itself as police is disparaging to law enforcement within the City of Oakland. While I agree that we should not issue a letter, we can submit a sample letter (has written one and can be read into the record) with the recommendation to the City Council and the City Council take official action. If we can get this message to our citizenry, what it does is that it goes straight to the heart of our mission and goals.

T. Smith said that we have a very short turnaround between our next meeting. The sample letter can be included on the next agenda.

b. Public Comment

Mariano Contreras recommended that the wording include that DHS or ICE in Oakland identify themselves and do not identify themselves as police.

A. Abarca regarding speaking out now – attacks in the community are on all people of color. We need to stand firm and support the Mayor.

Mary Vail regarding the importance of support from the Commission for the revised city policy, for the city officials speaking out, and for defending our department's reputation against the misrepresentation.

Bruce Schmiechen regarding holding a conversation with our police department of putting on some restraint on who gets transferred to the Sheriff's jurisdiction, when

it happens, why it happens.

E. Prather asked A. Dibley that if we were to make a recommendation to the City Council, how would we proceed. A. Dibley responded that there is a 10-day advance notice requirement and the most efficient way is that the recommendation be in writing.

S. Hom reported that there is a Rules Committee of the Council and they are the ones that schedule items – could submit it there and say it is from the Police Commission. Likely things generally go to a committee first, example Public Safety Committee and have the opportunity for discussion and then they forward it on to the full Council.

E. Prather recommended that he put together a letter that would be from the Commission to the City Council and submit that along with a draft letter attached for the City Council to adopt. In the interim, he asked if Commissioner Dorado or members of the Latino Task Force could provide comments relating to the letters.

The item will be tabled for the next meeting.

XII. Discussion – Outreach Plan

a. Discussion

A. Dooley reviewed Item 12 (proposal) in the Agenda Packet; any changes to let her know otherwise she will turn the document over to the AD Hoc Community Outreach Committee and await assignments. She said the contact person for the NCPCs for commissioners is Patricia Rose. She reached out to Ms. Gleason about public meetings and she gave her a name of who coordinates the meetings.

J. Dorado said this is a good effort. He spoke about the NCPCs. It is an installed and recognized network that can and should be utilized for outreach and communication. NCPCs should communicate, collaborate and cooperate.

R. Jackson said that it is an outstanding document and certainly will want to add to it.

G. Harris said that the document is well put together. It is important that we remember that we work hand in hand with the Agency (CPRA). Humanizing and the faces of the people behind the work is important – that we link the Agency with the Commission and add more information involving the Agency.

b. Public Comment

Elise Bernstein regarding the importance of community outreach.
Bruce Schmiechen regarding federal oversight; reports being dense and hard to read. He suggested that the Commission authorize someone if qualified to create a narrative that a person can understand relating to the federal oversight years.

Mary Vail regarding the importance of the document. The NCPCs are fertile ground to share information with the community – folks somewhat engaged with public safety issues, LL changes, Police Commission, CPAB (policing in

neighborhoods), Oversight of Measure Z, etc.

XIII. Discussion – Commission Training Tracker

a. Discussion

A. Dooley reviewed Item 13 (proposal/draft) in the Agenda Packet. She is missing a column (anticipated training). She also missed some trainings that people attended (E. Prather went to Measure LL; she did a ride-a-long). Let her know the trainings attend, etc. She would welcome feedback of where we have completed something and where we need more work. We need to locate training providers. OPD does not need to provide all the trainings. J. Dorado suggested a training on community policing.

b. Public Comment

No public comment.

THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION IN CITY HALL BUILDING BRIDGES ROOM, 3rd FLOOR AND WILL REPORT ON ANY FINAL DECISIONS IN CITY COUNCIL CHAMBERS DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA

Moved to Closed Session at 9:24 p.m.

XIV. Pursuant to Government Code §54957(b):

a. Public Comment

No public comment.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Interim Director of the Community Police Review Agency

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Returned to Open Session at 10:22 p.m.

XV. Oral Report of Final Decisions Made During Closed Session and Disclosure of Non-Confidential Closed Session Disclosures

a. Discussion

T. Smith reported that there was no reportable action taken in closed session.

b. Public Comment

No public comment.

XVI. Adjournment

MOTION to adjourn (M. Nisperos) and seconded (R. Jackson). The motion passed.
The vote was unanimous.

The meeting was adjourned at 10:23 p.m.