

CITY OF OAKLAND

AGENDA REPORT

2009 APR 16 PM 5:55
Office of the City Administrator

Attn: Dan Lindheim
From: Police Department
Date: April 28, 2009

Re: A Report From The Oakland Police Department Detailing The Civilianization Of Internal Affairs, Including The Fiscal Impact, Affect On The Negotiated Settlement Agreement, Timeline For Implementation, And Areas Of Consensus And Disagreement with the Mayor's Civilianization Task Force

SUMMARY

As requested by the Rules and Legislation Committee, the Oakland Police Department (OPD) has prepared an informational report detailing the Department's efforts to civilianize sworn positions in the Internal Affairs Division (IAD). This report addresses the following issues related to civilianization of the IAD:

- Fiscal Impact
- Areas of Consensus and Disagreement with the Mayor's Civilianization Task Force
- Affect on the Negotiated Settlement Agreement (NSA)
- Timeline for Implementation

FISCAL IMPACT

Civilianization of the sworn positions in the IAD would require (at a minimum) the creation of numerous civilian positions at additional expense to the City. Furthermore, the civilianization of internal investigations separate from the current IAD (as desired by the Citizens' Police Review Board [CPRB]), would require the expansion of office space for the CPRB as well as the purchase of additional resources (i.e., vehicles and office equipment) for use by the CPRB. Currently, the CPRB does not have available space or resources to accommodate additional investigators.

Since the goal of civilianization of the IAD is to return sworn members to field duties (not eliminate the positions), any costs associated with the transition would be above and beyond the current budget for the Police Department and the CPRB.

BACKGROUND

On November 3, 1995, the Police Executive Research Forum (PERF) completed a management study of the Oakland Police Department (OPD) and made recommendations for the civilianization of several sworn administrative positions so they could be reallocated to law

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enforcement functions. The PERF report identified a total of 58 sworn positions that could effectively be civilianized.

On December 2, 2008, the Department reported to the Council on its efforts to civilianize a variety of sworn positions within the Department.

The Department has continued to explore civilianization of IAD positions through a working group composed of members from the Oakland Police Department and the Mayor's Civilianization Task Force, which includes members of the Citizen's Police Review Board (CPRB) and People United for a Better Life in Oakland (PUEBLO).

KEY ISSUES AND IMPACTS

Areas of Consensus and Disagreement with the Mayor's Civilianization Task Force

- Make the CPRB the sole intake agency for citizens complaints (Disagreement)

The Mayor's Civilianization Task Force recommends that "the CPRB [be] the sole intake agency for citizens' complaints against Oakland police officers." (*Community Task Force Report on Public Safety*, page 10) Essentially, as noted during one working group, the IAD would refuse complaints and refer complainants to the CPRB. The Mayor's Civilianization Task Force believes this would create "a simple venue for citizens to file grievances with the City" (*Community Task Force Report on Public Safety*, page 10). The OPD disagrees for several reasons. Currently, there are more options available to the citizens to make a complaint than simply going to the CPRB. Complainants have direct access in real time to the complaint process by being able to make complaints at any time in the field or by phone. These processes were mandated by the federal court as outlined in the Negotiated Settlement Agreement. Additionally, the NSA requires all "personnel who become aware that a citizen wishes to file a complaint" to begin the complaint process (*Negotiated Settlement Agreement*, page 8). While the Mayor's Civilianization Task Force may argue that most citizens do not trust the IAD (an assertion with which OPD disagrees), the IAD has continued to intake several hundred new cases each year (approximately 1,150 in 2006, 1,400 in 2007, and 1,700 in 2008). In contrast, according to the *CPRB's 2007 Annual Report*, their "number of complaints has stabilized beginning in 2005 at approximately 79 complaints per year." (Page 3) This is despite the CPRB's community outreach efforts and the fact that every complaint packet from the OPD provides contact information for the CPRB. Additionally, when an IAD investigation is completed complainants are sent a final letter explaining the findings of the investigation. The letter advises complainants of their right to file a complaint with the CPRB and provides the CPRB's phone number.

- Begin with Civilianization of the Administrative Section (Consensus)

The IAD is divided into the Administrative Section and the Investigative Section. The Administrative Section consists of sworn intake officers who conduct the initial complaint interview, collect initial evidence from the complainant, and complete less complex investigations. The Investigative Section is staffed by police sergeants and is responsible for investigating allegations of Class I violations of the Manual of Rules¹. The Police Department and the Mayor's Civilianization Task Force agree that it would be appropriate to begin civilianization with the Administrative Section, but disagree as to who would supervise the civilian investigators.

- Assignment of Civilian Investigators (Disagreement)

The OPD and the Mayor's Civilianization Task Force disagree as to the assignment of civilian investigators. The Mayor's Civilianization Task Force believes civilian investigators should be assigned to the CPRB, and only investigate complaints from citizens. The OPD believes civilian investigators should be part of the OPD and assigned to the IAD. These investigators would replace sworn investigators and would still be supervised by OPD personnel. The OPD has spent considerable time and money creating and refining systems that comply with the numerous legal and NSA requirements associated with internal affairs investigations. Bifurcation of the complaint process will require the creation of additional systems and the duplication of numerous processes in order for the CPRB to handle complaints made by citizens and the IAD to handle complaints made within OPD.

- Cost Savings of Civilian Investigators (Disagreement)

The OPD and the Mayor's Civilianization Task Force disagree as to the savings that would be realized by hiring civilian investigators. As noted in the *Community Task Force Report on Public Safety*, the Mayor's Civilianization Task Force asserts that sworn officers are more than twice as expensive as civilian investigators, "20 CPRB staff would cost the City the same as approximately eight IAD officers." (Page 11) This is a simplistic analysis that ignores the realities of what it takes to complete an investigation. It is the opinion of staff that experienced officers can conduct timelier investigations with better accuracy than civilian investigators; therefore a 1:1 ratio cannot be used. According to the *CPRB's 2007 Annual Report*, 82 complaints were handled by two investigators. In 2008, the IAD handled 1,156 complaints (an additional 556 were investigated outside of the IAD). The staffing level of IAD varied throughout the year, but even when using the maximum number of investigators assigned at any one time (9 officers and 10 sergeants), this is still an average of 60 complaints per investigator compared to the 41 per investigator at the CPRB. Additionally,

¹ Class I violations as defined by the NSA includes "the most serious allegations of misconduct, which, if proven, might serve as the basis for a criminal prosecution and/or for dismissal from OPD."

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CPRB investigations are frequently dependent on interviews conducted by OPD investigators. Consequently, the investigations “completed” by the CPRB are done so at significant expense to the OPD; these hidden expenses are not apparent when simply comparing salaries. A fully burdened police officer costs \$166,752 and a CPRB Complaint Investigator II costs \$128,376 (24% less). A sergeant costs \$192,392 and CPRB Complaint Investigator III costs \$146,340 (24 % less). Neither of these comparisons supports the assertion on page 11 of the *Community Task Force Report on Public Safety* that “an IAD officer makes more than twice the salary of a CPRB investigator – which doesn’t even include benefits comparison. So, 20 CPRB staff would cost the City the same as about eight IAD officers.” Considering that on average IAD investigators cleared 50% more cases than CPRB investigators, it would be necessary to hire three Complaint Investigators (\$385,128) for every two OPD investigators (\$333,504 for officers, \$384,784 for sergeants). Hence, there are no savings to be obtained.

The *Community Task Force Report* contends that the proposed changes would allow “most of the 24 IAD officers to be re-deployed to the streets” (page 11). There are only nine officers currently assigned to receive and investigate complaints in the Administrative Section (there were less when the *Community Task Force Report* was written). At most it would only be these nine officers that could be re-deployed; however, in reality all nine will not likely be re-deployed² since the CPRB investigators will only handle citizen complaints and not misconduct discovered or reported by the OPD. While there are 10 sergeants assigned to the Investigations Section, they would not be re-deployed since they would be used by “OPD to conduct a parallel investigation” of Class I complaints (*Community Task Force Report*, page 10).

- Affect on the Negotiated Settlement Agreement (**Disagreement**) & Timeline for Implementation (**Disagreement**)

The OPD and the Mayor’s Civilianization Task Force initially appeared to agree that civilianization would create significant challenges in the City’s and OPD’s ability to reach compliance with the NSA. Moving intake of citizen complaints to the CPRB as envisioned by the Mayor’s Civilianization Task Force would require modification of the NSA through stipulations that must be approved by the plaintiffs’ attorneys. Additionally, new policies and procedures would need to be created and approved by the Independent Monitoring Team (IMT) to ensure they were in compliance with the NSA. Even if civilian investigators were assigned to the IAD as the OPD recommends, new personnel would be unfamiliar with the numerous requirements of the NSA, specific concerns of the IMT, and the history of decisions made by the IMT concerning matters related to compliance.

² It is difficult to ascertain a realistic number of how many officers will be redeployed at this point since the handling of complaints may or may not change upon completion of the NSA obligation in 2010.

At this time it appears the Mayor's Civilianization Task Force desires to proceed with civilianization beginning with the fiscal year 2009/2010. This will be over six months prior to the scheduled end of the NSA and does not take into consideration any possible extension. Due to significant challenges, civilianization would have on the City's and OPD's ability to achieve compliance and complete the NSA, the OPD recommends that any type of civilianization should not begin until the expected conclusion of the NSA (January 2010).

- "Storefront" Office Space Required for the CPRB (Consensus)

The OPD and the Mayor's Civilianization Task Force agree that "storefront" office space is required for the CPRB. However, the OPD notes that if civilian investigators were assigned to the CPRB instead of the IAD, it would be inappropriate to use the IAD's offices for CPRB investigators. As noted above, it will not be possible to redeploy every officer since they have other duties aside from complaint investigations. Additionally, housing civilian CPRB investigators and sworn investigators together would be contrary to the stated intentions of the Mayor's Civilianization Task Force to separate the intake process from the Department.

Challenges

The City of Oakland's current and anticipated budget deficit will significantly impact the hiring of additional civilian staff, acquisition of office space, and funding of other operation and maintenance expenses. The proposed civilian investigators and their operation and maintenance costs will be additions (not replacements) to the current staffing, which will allow the sworn members to return to field duties.

SUSTAINABLE OPPORTUNITIES

Economic: The exact benefits and consequences of civilianizing positions in the IAD are disputed. It has the potential to increase the number of sworn officers on the street, but will require additional expenses that may not be in the best interest of the City considering the current financial state of affairs.

Environmental: There are no environmental concerns identified in this report.

Social Equity: The OPD believes civilianization of IAD positions at an appropriate time that does not impede or delay the completion of the NSA would allow more officers to be deployed to field duties and areas of the City in need of additional services. The OPD believes immediate civilianization of the IAD, as proposed by the Mayor's Civilianization Task Force, would result in greater social inequity. Citizens would no longer be able to start the complaint process through the numerous methods currently available. Instead, only citizens with the time and resources to make contact with the CPRB would be able to initiate in the complaint process.

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DISABILITY AND SENIOR ACCESS

There are no ADA or senior citizen access issues identified in this report.

RECOMMENDATION

Staff recommends acceptance of this report.

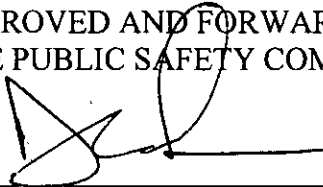
Respectfully submitted,



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APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



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