



**CITY OF OAKLAND
OAKLAND POLICE COMMISSION**

FINAL

Meeting Minutes¹

Wednesday, February 14, 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 6:30 p.m.

II. Roll Call and Determination of Quorum

Commissioners present: Mubarak Ahmad, José Dorado, Ginale Harris, Mike Nisperos, Edwin Prather, and Thomas Smith. Quorum was met.

Alternate Commissioner present: Andrea Dooley.

Commissioner absent: Regina Jackson.

Alternate Commissioner absent: Maureen Benson.

City staff present: Stephanie Hom, Deputy City Administrator
Allison Dibley, Deputy City Attorney, City Attorney's Office
Anne Kirkpatrick, Chief of Police, Oakland Police Department
Oliver Cunningham, Acting Assistant Chief of Police, Oakland Police Department
Leronne Armstrong, Deputy Chief of Police, Oakland Police Department
Paul Figueroa, Captain, Oakland Police Department
Virginia Gleason, Deputy Director, Oakland Police Department
Anthony Finnell, Interim Executive Director, Community Police Review Agency

III. Open Forum

Public comments were provided by the following:

Paula Hawthorn regarding the Negotiated Settlement Agreement (NSA).
A Short Guide to the Negotiated Settlement Agreement by Paula Hawthorn
was distributed at tonight's meeting.

IV. Action – Election of Chair (Stephanie Hom)

a. Nominations

¹ These minutes are a summarization of the actions and comments of the City of Oakland Police Commission for Wednesday, February 14, 2018.

MOTION to have Thomas Smith continue as Chair moved (M. Nisperos) and seconded (J. Dorado).

Commissioner Prather endorsed Mr. Smith for Chair stating that he has done an immense amount of work in a short amount of time and has been very valuable in getting the Commission started.

b. Discussion

M. Nisperos motioned that the nominations be closed.

c. Public Comment

Elise Bernstein encouraging everyone to have respect, recognize members as equal and listen carefully to all comments which was about the last Commission meeting. [She missed speaking in Open Forum].

d. Action

MOTION to have Thomas Smith serve as Chair of the Commission until February 2019 moved (M. Nisperos) and seconded (J. Dorado). The vote was 6 ayes with one commissioner absent (R. Jackson).

Chair Smith thanked Commissioners.

V. Action – Election of Vice-Chair (Thomas Smith, Police Commission Chair)

a. Nominations

MOTION to have Ginale Harris continue as Vice-Chair moved (J. Dorado) and seconded (M. Nisperos).

b. Discussion

M. Nisperos motioned that the nominations be closed.

c. Public Comment

No public comments.

d. Action

MOTION to have Ginale Harris serve as Vice-Chair of the Commission until February 2019 moved (J. Dorado) and seconded (M. Nisperos). The vote was 6 ayes with one commissioner absent (R. Jackson).

Vice-Chair Harris thanked Commissioners.

VI. Action – Approval of Draft Commission Meeting Minutes

a. Discussion

No discussion.

b. Public Comment

No speakers.

c. Action

MOTION to approve the minutes of January 24, 2018 moved (E. Prather) and seconded (G. Harris). The motion passed the vote was 6 ayes with one commissioner absent (R. Jackson).

VII. Discussion – Oakland Police Department Report

a. Discussion

Chair Smith introduced Chief of Police, Anne Kirkpatrick, thanked her for speaking tonight and announced that she has agreed to attend the Commission meetings regularly. Chair Smith reported that Chief Kirkpatrick will speak about the items that are on the agenda and she will listen to public comment. The Chief Congratulated Chair Smith and Vice-Chair Harris for their appointments.

Chief Kirkpatrick explained that when the agenda features a special topic, she will ask that the officers with the most expertise to speak on that matter. She asked Deputy Director, Virginia Gleason, to address PRIME which is under her unit.

Ms. Gleason introduced Captain Paul Figueroa who leads their IT section and is the project leader on PRIME. Captain Figueroa gave a report/update relating to PRIME it tracks data, does case evaluations, tracks officer production, and canine use. PRIME 2.0 is in progress. It imbeds links to the footage of incidents in the form so a supervisor can review it. Stop data will be readily available to show the productivity of staff. Training records will be more robust including Academy records. The personnel database will also be rebuilt.

Commissioner Nisperos asked if the CPRA data complaints is included in PRIME and does CPRA Director have access to PRIME data? Captain Figueroa said that the Director has access and works with Captain Coleman with Internal Affairs Division. If OPD receives a complaint from CPRA, it is processed in PRIME.

Commissioner Prather asked if the fully length video is included in the form links to clips in PRIME 2.0. Captain Figueroa responded, Yes, the full length of everything that is part of the incident when it was turned on and turned off is included; no one is subjectively editing.

Vice-Chair Harris asked whether PRIME has anything to do with how communications are reported to the CPRA. Captain Figueroa is not sure of the process of how IAD is communicating with CPRA– OPD keeps a complaint log of every complaint comes in which is forwarded every morning to the CPRA and Internal Affairs.

Commissioner Nisperos asked if you know if PRIME will have an input terminal available at the agency. Captain Figueroa explained that PRIME is a web-based application that only requires Internet Explorer to use, but that PRIME has very strict controls for logins and permissions the control what can be seen that can be

granted to the agency. Chief Kirkpatrick stated that certain people will have access but not everyone. She explained that OPD is not the architect of the system and it is an architecture issue.

Finnell explained that at the current time, the CPRA does not have direct access at our computers. CPRA has limited access to information and must go to IAD and or the information sent to us.

Nisperos asked whether anyone asked CPRA about accessing PRIME 2.0? Finnell explained that CPRA has not had a discussion directly tying up to 2.0. CPRA is waiting for the final decision on the complete process.

Hom – Commissioner Nisperos asked if this commission needs to make a policy recommendation to the Chief recommending that CPRA have this access or is it something that is just going to happen. Hom explained that the agency is going to have better access electronically.

G. Harris – When is this going to happen? The Chief said that the City IT's Department builds that system and OPD is an end-user.

Hom explained that once a contract is signed with the preferred IT vendor, the City is looking at a 12-month time period to make the improvements needed to PRIME 1.0 and as to PRIME 2.0 enhancements are going in parallel and those expectations for completion are in the second quarter of 2019.

The Chief explained until then, the information is shared within 24 hours.

Commissioner Ahmad asked if this information PRIME and data going to be available to the Commissioners? Chief explained that the Commission will get whatever it is legally entitled to have from the OPD.

The Chief said the next topic is the Executive Force Review Board, which has to do with the highest level of use of force, such as an officer involved shooting.

The Chief introduced Acting Assistant Chief Cunningham of the OPD, who is the Chairperson of the Executive Force Review Board ("EFRB"), the Force Review Board, and the Pursuit Board. The Executive Force Review Board handles officer shooting, in custody deaths, vehicle pursuits resulting in death, and the Chief can designate any use of force to the EFRB. It is governed by policy K4.1. It been in effect since 12-16-2015 with no modifications to the policy since that time. There is a use of force coordinator, civilian position, located in the Chief's office. The EFRB the scheduling is required by policy to be scheduled within 45 days once the IA Division Investigation is complete. The Force Review Board is 90 days. In most cases, for investigations, we have a policy that they be done within 180 days. It is a 3-member board that is chaired by a deputy chief or higher. The City Attorney, subject matter experts, and the training division are also present. The last one was in September 12, 2017 (Las Vegas shooting incident). OPD has not yet scheduled the next EFRB (in-custody death). OPD will ensure that the Commission Chair is recognized for his attendance.

Acting Assistant Chief Cunningham offered to respond to questions.

Commissioner Prather asked about K-4.1. Do non-voting members undergo the same training as voting members? Cunningham stated that OPD policy does not specifically speak to non-voting member training requirements. Chief Kirkpatrick

said that it is important that we get the Commission Chairperson or his designee trained. She will work toward making that work.

E. Prather asked if General Order 4.1 will be changed to reference the Commission Chairperson's participation in the EFRB. Since the General Order was written in 2015, it does not reference the Chairperson's participation. Cunningham agreed to change the order.

Chief Kirkpatrick then addressed the topic of immigration; OPD's role and participation. OPD does not enforce civil immigration laws in any capacity. OPD does not have the authority to do it because it is civil law. Policy prohibits OPD from inquiring into anyone's immigration status. As of January 8, 2018, the City of Oakland prohibited OPD from having any interaction with the criminal side of ICE, unless there is a public safety emergency.

E. Prather mentioned that there is confusion between ICE and the Police Department. ICE sometimes identify themselves at times as police officers. He asked Chief Kirkpatrick if she is aware of this issue. The Chief has shared her concern with the Special Agent Counsel and mentioned that it is confusing for the public, but OPD has no control over it. The Chief does not want OPD connected in any way with ICE or Homeland Security Investigations unless it is an emergency situation.

A. Dooley asked about underlying policy 415 to have an opportunity to review the resolution. Chief Kirkpatrick said the most current drafted past resolution is 87036, filed on January 18, 2018 at 1:33 p.m. The underlying policy will be updated for the police department.

J. Dorado asked about ICE - not truthful -- that when you spoke to the gentleman in San Francisco did you stress with him that not only they should come in with ICE or HIS vs. police but also that they come in with marked cars with some type of identification. Chief Kirkpatrick said that she did not have that conversation with him on that topic and she will not have any conversations with ICE.

Chief Kirkpatrick addressed the update of the status conference in front of the Federal Judge on February 2 in Judge Orrick's Courtroom, Federal District Court. The two main issues were PRIME and Task 34 (stop data and the racial profiling issues associated with that). Those are the two tasks to get in compliance that are the most pressing. The Judge was complimentary to progress they are seeing in our department but he made it clear that we are still not done and these are the issues that we must tackle. We have come up with action steps (for OPD to get in compliance). The next conference is scheduled for June 1 in Judge Orrick's Court.

G. Harris asked to see the plan with the action steps. Chief Kirkpatrick said that what we have we can give you an idea of the action steps that to the Chair.

A. Dooley said to G. Harris added that Judge Orrick asked the City Attorney that was present to report on any of the open recommendations and whether any have not been adopted by the next status conference. Chief Kirkpatrick said that it is the Stanford Recommendations (50 recommendations associated with Task 34) and OPD has completed most of them. OPD will share the list and give a status update.

Acting Assistant Chief Cunningham spoke on OPD discipline policies.

G. Harris mentioned that in terms of the policy, the Commission has not been able to look at the suggested revisions of the policy and suggested that they can do so to

provide input. A. Dooley agreed explaining under Measure LL that is one of the Commission's responsibilities.

G. Harris said that OPD standards are held higher than anybody else's. We expect the behaviors of the officers that oversee Oakland and keep Oakland safe to be righteous. The discipline process is a big deal; it is very drawn out and long and it shouldn't be that way. For the things that have happened within the department, the discipline hasn't fit the crime. When they are not held accountable, that is not right. That is the perspective we are coming from – we want to make our policies better that work for the public.

b. Public Comment

Lorelei Bosserman regarding looking at the stop data that is being entered in PRIME.

Paula Hawthorn regarding PRIME having nothing to do with bringing OPD into compliance and questioning the effectiveness of Dr. Eberhardt's suggestions, proposals, strategies referenced in her report.

Rashidah Grinage regarding importance of focusing on questions and answers during the OPD report. She suggested the Chief's future reports be submitted in writing as part of the agenda packets.

Henry Gage regarding questions for Chief Kirkpatrick. Chair Smith said that he can ask questions, and they will be placed on the next Agenda for the Chief to answer.

(1) OPD has not been certifying applications through the State Department for the U-Visa program. Is this true? Why has this happened? What corrective action is being taken to protect these vulnerable people living in the city?

(2) OPD Policy regarding PDRD or PDRS release policy. Why we should wait for Alameda County DA or OPD to complete their investigation before releasing the video?

(3) Is there a Citizens Police Academy class for 2018? When will it take place?

Mary Vail regarding Eberhard recommendations and collection of data have not changed the day-to-day practices that lead to the bad numbers and accountability of officers who will not change. Need for more accountability.

VIII. Discussion – Oakland Police Commission Enable Ordinance

S. Hom gave an update on the meet and confer process for the enabling ordinance. She stated that it is anticipated that the draft enabling ordinance will go in front of the open session of City Council on March 6.

a. Discussion

M. Nisperos asking whether the March 6 reading will be the first reading.

S. Hom deferred to the City Attorney (A. Dibley). A. Dibley will get back to the Commission at its next meeting about whether there will be both a first reading and a submission at the open session of City Council on March 6. Her understanding is that the submission to the Commission would take place in open session on March 6 and at that point the 45-day period would run but Council will decide what they will do.

E. Prather regarding appointing a subcommittee set by our next meeting to tackle

this matter. T. Smith asked that members email him if they are interested.

b. Public Comment

Lorelei Bosserman regarding the enabling ordinance and the RFQ.

Rashidah Grinage regarding supporting E. Prather's suggestion forming a subcommittee and several recommended changes for the enabling ordinance that will be to the Commission for consideration.

Larry White regarding the Ordinance and the issue of the 45 days being confusing. He suggested T. Smith contact the President of the City Council for clarification.

Elise Bernstein regarding the discipline committee and the roles of mayoral appointees, selection committee appointees and alternates commissioners.

M. Nisperos regarding presentations to include written reports.

IX. Action – Request for Qualifications for Legal Services: Community Police Review Agency

M. Nisperos will provide an update on the progress of the RFQ for legal services.

a. Discussion

M. Nisperos reported that he met with the City Attorney and went over the existing RFQ and find it adequate to our needs to go about the process of hiring a city attorney and urge the commission to send it back and ask that it be published soliciting applications and that we give it at least two weeks for that application period that following the closing of that application period we would work in conjunction with the City Attorney in making the selection of the legal advisor.

b. Public Comment

Larry White regarding the RFQ and written comments provided by the Coalition on the RFQ and the attorney position.

Lorelei Bosserman regarding the RFQ.

c. Action

MOTION to accept the RFQ and that we refer it to the City Attorney and ask that the application period be reopened and to stay in effect for two weeks and at the close of the application period that we be involved in the interview and selection process of the legal advisor (M. Nisperos) and seconded (J. Dorado).

The motion passed.

The vote was six Yes and one commissioner is absent.

X. Action – Change of Regular Meeting Dates for the Oakland Police Commission

The Commission will determine whether to change its regular meeting schedule to the second and fourth Thursdays of each month at 6:30 PM.

T. Smith reported that this matter is about access. The Commission needs to be able to broadcast live and ensure that the Police Commission can reach out and touch as many people as possible. The Police Commission has a very important mission and a public charge and part of that is trying to get the broadest number of people involved and action. One way that we can do that is through live broadcast so if people cannot attend the meeting they can tune-in. Live broadcast also enables those who cannot be present for the meeting to have immediate access to the information. Thursday is the only day available for the Commission to broadcast live on KTOP.

a. Discussion

G. Harris said that she is very much in favor of changing the date due to public access.

M. Nisperos said he will be voting against changing the date because we will be excluding one of our Alternate members from attending due her teaching a class on Thursday evenings.

E. Prather explained that he has found that "justice delayed is justice denied". By not having access to as many people as possible, we are delaying the work of this commission. We are delaying the public's involvement. We are delaying all of the work that we can do. He stated he cannot deny public access to what the Commission is doing. This is much bigger than all of us. If it is indeed confirmed that Thursday is the only date we can go live, I will be voting in favor of going live as early as the first meeting in March.

Commissioner Dorado explained that if Thursdays are the only night the Commission can be broadcasted live then it outweighs all other considerations. It is simply an overriding concern.

A. Dooley said that she is available on Thursdays and that it is a priority. She believes that M. Benson is teaching a class and the class is for the duration of this semester and hopes that this does not preclude her from being a member of the Commission.

M. Nisperos whether missing three meeting in a row would automatically exclude someone from serving on the Commission.

T. Smith stated that he believes that three absences do not automatically exclude a Commissioner from the Commission and that there are excused absences.

A. Dooley stated that the absence rule may not apply to alternate commissioners.

A. Dibley reviewed Measure LL now and referenced Section 604 (c)(10) – the City Council may remove members of the Commission for absences from three consecutive meeting or five meetings in a year and that excused absences exist.

M. Nisperos asked that the Chair grant permission for Alternate M. Benson to be absent.

b. Public Comment

Mr. Gage referenced Measure LL and the Chairperson's power to excuse absences.

Mary Vail regarding Measure LL, Alternate M. Benson's absences and the possibility of put this issue over several months.

Rashidah Grinage regarding live TV broadcast versus Alternate Commissioner Benson's ability to attend the meeting.

c. Action

E. Prather regarding the public comment at the previous meetings was calling for live broadcast and now there is some public comment is asking why there is a rush to go live, but he noted that three public speakers may not be a good sample size. He mentioned that possibility of moving topic to the next meeting for further discussion.

G. Harris believes that the meetings need to be moved to Thursdays. She has been approached by several people who cannot make the meetings and are interested in the Police Commission. The Commission wants to be fair and open to the whole community to see this Commission in action.

MOTION (M. Nisperos) to table this item until the next meeting and ask that the City Administrator come back with a firm commitment from KTOP on scheduling and how quickly it can be broadcast or any guarantees KTOP can make to us – When they tape it, when will it be shown. Seconded (J. Dorado).
The vote was 3 Yes, 2 No, 1 Abstention, and 1 commissioner is absent.
The motion failed.

J. Dorado regarding balance – the overriding concern is that the public sees the Commission live as soon as possible, not the day after, and not with any confusion about posting dates. He recommends meeting on Thursdays. The Latino population would also like to see live broadcast.

MOTION (G. Harris) to move the meetings to the second and fourth Thursdays of each month at 6:30 PM. in Council Chamber beginning March 8 to begin broadcasting live. Seconded by (T. Smith).
The motion passed 4 Yes, 1 No, 1 abstention, and 1 commissioner absent.

XI. Discussion – Commission Training Tracker

a. Discussion

A. Dooley spoke about the chart created to track completed training for each commissioner. Comments made regarding placing the tracker on a calendar and including time frames for scheduled trainings, and goals. A. Dooley will return with an amended tracker for the commission.

b. Public Comment

No public comments.

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 9:05 pm.

XII. Pursuant to Government Code § 54957(b)

a. Public Comment

No public comments.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: Interim Director of the Community Police Review Agency

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Returned to Open session at 10:08 pm

XIII. Oral Report of Final Decisions Made During Close Session & Disclosure of Non-Confidential Closed Session Discussion

XIV. Adjournment

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

The meeting was adjourned at 10:09 pm.