

**2024 Review of the BART Police Oversight Structure – OIPA Worksheet [DRAFT]**

OIPA Recommendation [Grouping]	OIPA Practical Clarifications
<p><b>1</b> The Board should increase OIPA's annual budget to keep pace with increases in the BPD budget and policing activity.</p> <p>Chapter 1-06 (Relationship Between District Departments)</p>	<p>The IPA needs additional resources to perform all of the duties delineated in the Model, ensuring the highest level of BART police oversight and accountability. OIPA proposes that the BART Board of Directors (Board) establish OIPA's budget as equivalent to 1.5% of the BART Police Department (BPD) annual budget. This proposal would increase the current OIPA annual budget, currently equivalent to ~1.07% of the BPD budget, by 0.47% or about <b>\$537,339 for FY2025</b>.</p> <p><b>NOTE:</b> The OIPA budget has not kept pace with the growth and increased activity of the BPD. OIPA is challenged in its ability to fulfill all of its duties and responsibilities in the most timely and/or effective manner.</p> <p>Following the killing of George Floyd in 2020, BART increased the OIPA budget to allow for the addition of two full time employees (FTEs), an investigator and stakeholder engagement administrator, on the condition that OIPA give up virtually all of its non-labor budget. Since 2021, OIPA has operated with a relatively small non-labor budget while experiencing an increased workload. In contrast, other BART departments continued to have their non-labor budgets funded, even in a time of fiscal crisis for the District.</p> <p>In March 2023, the BART Board approved an increase of ~\$8.5 million dollars to the BPD budget, intended to support the enhancement of BPD staffing and operations. BPD has significantly increased its presence in the BART system and has doubled the number of law enforcement contacts. Increased policing activity has coincided with an increase in the number and complexity of investigations that OIPA provides. Notably, OIPA has seen an increase in complaints from BPD employees. While this internal complaint increase signals that BPD personnel have confidence in OIPA's objectivity and work quality, these complaint investigations are time-consuming. Internal complaints typically require more complex investigations and lengthier reports than citizen-initiated complaints, though citizen complaints may also prove to be complex.</p> <p>In 2024, BART supported a \$1.7 million dollar infusion to the budget of the Office of the Inspector General in order to support that office in the fulfillment their oversight responsibilities.</p> <p>OIPA should be similarly resourced.</p> <p><i>*Specific projections regarding proposed spending of additional non-labor funds are attached hereto (Appendix 1).</i></p> <p><b>BENEFIT:</b> Structuring the OIPA budget to be equivalent to 1.5% of the BPD budget ensures that as BPD grows and take on more responsibilities, the corresponding civilian oversight agency can scale up in resources to maintain robust, independent oversight. It also provides a degree of financial independence, reducing the risk that BPD or BART management can undermine oversight efforts or OIPA's independence by withholding necessary funding. Additional benefits of a well-resourced oversight agency include:</p> <ul style="list-style-type: none"> <li>• Heightened risk management</li> <li>• Fewer costly misconduct settlements</li> <li>• Increased public trust</li> <li>• Increased public safety via improvements to BPD policies and practices</li> <li>• Prevention of harm, including loss of life and injuries related to use of force</li> </ul> <p><b>IMPACT:</b> ~\$200k increase in non-labor budget. More effective oversight and more consistent and detailed reporting. Enhanced independence in keeping with the intent of the Model.</p>

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2	<p>The OIPA budget, spending, and staffing should not be controlled by the General Manager (GM).</p> <p>Chapter 1-06 (Relationship Between District Departments)</p>	<p>The budget for OIPA should be established by the Board, and once allotted, the budget spending should not be subjected to approval or denial by the GM's office.</p> <p><b>NOTE:</b> To avoid undermining the independence of the civilian oversight structure, the Board should prohibit the GM from controlling OIPA's budget and spending decisions, and the annual budget for OIPA should be established by the Board as proposed above.</p> <p>Budget spending decisions are currently required to be approved by the GM or the Deputy General Manager (DGM). BART's internal spending approval processes should be adjusted to eliminate the requirements for GM approval of the IPA's spending decisions. For instance, whether, how, and where OIPA staff may travel currently requires GM or DGM review and approval.</p> <p>Instead, the Independent Police Auditor (IPA) should have the authority to approve all OIPA budget spending.</p> <p>OIPA's budget spending will remain transparent and subject to review by BART's Internal Audit Department, the BART CFO, the Board, and the public.</p> <p>The Model requires that OIPA's independence may not be undermined. The independence of OIPA is objectively undermined by the degree to which the General Manager, who heads the overseen police department, controls the OIPA budget via the existing processes.</p> <p><b>BENEFIT:</b> Giving the IPA this independent authority will ensure OIPA's independence and reduce conflicts of interest. It will eliminate the opportunity for the GM to under resource BART's independent civilian oversight entity. The Board would be affirming its adherence to the intent of the Model as written.</p> <p>Any actual and perceived conflict of interest will be removed.</p> <p>The Board can mitigate the perception that OIPA does not operate independently of the overseen police department.</p> <p><i>*Supporting documentation, including correspondence from experts in the field of law enforcement oversight, the National Association for Civilian Oversight of Law Enforcement (NACOLE), and law enforcement leadership regarding the importance of oversight independence is included (Appendix 2).</i></p> <p><b>IMPACT:</b> No fiscal impact.</p>

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<b>3</b>	<p>Add a Deputy Independent Police Auditor (DIPA) position to the OIPA.</p> <p>Chapter 1-02 (Appointment of the IPA)</p>	<p>OIPA needs additional support to perform all of the duties delineated in the Model, ensuring the highest level of BART police oversight and accountability.</p> <p><b><u>NOTE:</u></b> Every other BART Board Appointed Officer benefits from having an Assistant or Deputy (or both) to whom they can delegate tasks and responsibilities. The addition of an investigator in 2021 and OIPA's first outreach specialist in 2022 remains insufficient to keep pace with complex investigations, increased caseloads, and other oversight, community engagement, and auditing responsibilities.</p> <p><b><u>BENEFIT:</u></b> With one additional supervisor, OIPA will be better able to provide effective oversight and improved examination of the patterns, practices, systems, and polices of BPD.</p> <p>Authorizing the addition of a deputy will allow the IPA to focus more on executive-level oversight work, including additional, consistent, and detailed reporting and proactive auditing of BPD policies, and practices.</p> <p>This structure also provides for favorable succession scenarios, opportunities for advancement, and staff retention. Authorizing a DIPA will represent an equitable approach to the distribution of resources in the District.</p> <p><i>*Supporting documentation regarding the tasks of a proposed Deputy IPA is included (Appendix 3).</i></p> <p><b><u>IMPACT:</u></b> ~\$280-315k/yr. increase in the OIPA labor budget More effective oversight and more consistent and detailed reporting. Succession opportunities and long-term sustainability of OIPA. Opportunities for advancement for OIPA staff.</p>

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<b>4</b>	<p>GM should only be allowed to accept or reject the Chief's recommendation(s) on appeal.</p> <p>Chapter 1-04(B)(v) (Recommendations for Corrective Action)</p>	<p>The Model currently provides that the GM reviews appeals of OIPA investigation findings and recommendations, including discipline, brought either by the Chief of Police or the BART Police Citizen Review Board (BPCRB) (The Model, Ch. 1-04 DUTIES AND RESPONSIBILITIES).</p> <p>In the event of such an appeal, the GM should not craft his/her own findings if he/she rejects the Chief's rationale for appealing an investigative outcome and/or disciplinary recommendation.</p> <p>Outcomes generated by the independent oversight system should remain intact if the Chief's rationale is not persuasive to the GM.</p> <p>The imposition of the GM's subjective determinations undermines the independence of the system, in particular because the GM is the head of the police department.</p> <p><b>NOTE:</b> The Model appropriately and intentionally prohibits anyone from undermining the independence of the civilian oversight structure. If a Chief is unable to convincingly articulate the way(s) in which the OIPA determination is inaccurate, after approval by a majority of the BPCRB, the determination should remain unchanged in support of the independence of this objective oversight structure.</p> <p>Allowing interference from the GM, may result in the imposition of an inexperienced determination absent any request to do so from the Chief of Police. The appeal process should be limited to allowing the Chief to request a revised outcome and the determination regarding that appeal should be constrained to acceptance or rejection, not the crafting of a different outcome that was not reached by either the independent oversight professionals and appointed BPCRB volunteers or requested by the Chief of Police.</p> <p>The existing language requires that the GM "rule and submit his/her decision," but does not expressly authorize or permit the GM to craft his/her own findings.</p> <p><b>BENEFIT:</b> Accuracy of investigative outcomes, limiting risk and liability to the District, increasing community trust, maintenance of independence for civilian oversight professionals and volunteers.</p> <p><b>IMPACT:</b> No fiscal impact. More accurate and appropriate outcomes in connection with the appeals process.</p>

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<p><b>5</b> OIPA should be given the express authority and responsibility to audit BPD background investigations.</p> <p>[Duties]</p> <p>Chapter 1-04 (G)(i) [Duties and Responsibilities]</p>	<p>OIPA has become aware of deficiencies in individual background investigations and has concerns about the investigative processes, generally.</p> <p>BPD employees have expressed concerns about the improper release of private and personal information in connection with OIPA examinations of background investigation files. This matter should be resolved by the Board by including clear language in the Model to avoid challenges to OIPA's auditing processes and to eliminate resistance to OIPA audits and investigation in this extremely important and rapidly expanding arena.</p> <p><b><u>NOTE:</u></b> BPD relies on Commission on Peace Officer Standards and Training (POST) approval which only requires that certain investigative tasks be completed but which does not address the quality of the performance of those tasks.</p> <p><b><u>BENEFIT:</u></b> Prevents hiring problem and/or "wandering" officers who have engaged in misconduct at a prior agency. Reassures public and fellow officers about the quality and experience of BPD personnel. Reduces risk and liability to District.</p> <p><b><u>IMPACT:</u></b> May increase workload for OIPA.</p>
<p><b>6</b> Revise requirements re OIPA review of settlement agreements.</p> <p>Chapter 1-04 (C)(i) [Duties and Responsibilities]</p>	<p>OIPA should be authorized and empowered to review any and all settlements and adverse judgments related to BPD employee conduct. OIPA is currently authorized to review any significant settlements and adverse judgments involving BPD.</p> <p>The word "significant" is subjective and ambiguous, and the Model does not currently identify who will determine whether a settlement is significant.</p> <p><b><u>NOTE:</u></b> Settlements for relatively small dollar amounts should be considered as part of any evaluation of police practices at BART. The underlying conduct of the BPD employee(s) should be examined regardless of any negotiated outcomes.</p> <p><b><u>BENEFIT:</u></b> Identifying, addressing, and mitigating BPD employee conduct that exposes the District to liability and which negatively impacts our riders and the people we serve.</p> <p><b><u>IMPACT:</u></b> May increase workload for the IPA and OGC.</p>

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7	<p>Remove elapsed time monthly reporting requirement.</p> <p>Chapter 2-08 (A)(iii) [Relationship Between the BPCRB and OIPA]</p>	<p>The Model requires that OIPA monthly reports include the number of days elapsed since the receipt of the complaint. This requirement should be removed because the data point is not particularly relevant and does not provide significant insight or transparency, while creating additional work in connection with preparation of required reports. The number of elapsed days is dependent on the date of the applicable BPCRB meeting and is not tied to any statutory requirement.</p> <p><b>NOTE:</b> OIPA remains aware of whether all complaints are being addressed in a timely manner, and OIPA consistently reports on the number of days taken to <u>complete</u> an investigation, as required by the Model.</p> <p><b>BENEFIT:</b> Reduces the amount of time required to prepare monthly reports and eliminates unnecessary information from the report. This will also make it easier for OIPA to meet the DSO's deadlines for submission of agenda materials for publication.</p> <p><b>IMPACT:</b> Will decrease workload for the IPA.</p>
8	<p>The Model should specify that OIPA is <b>not</b> authorized to investigate allegations of misconduct lodged against civilian employees of BPD <b>or</b> the Model should be revised to authorize such investigations.</p> <p>Chapter 1-04 [Duties and Responsibilities]</p>	<p>Some complainants are confused and frustrated when they learn that OIPA is not authorized to independently investigate their complaints alleging misconduct by civilian BPD employees.</p> <p><b>NOTE:</b> Some complainants are confused and frustrated when they learn that OIPA is not authorized to independently investigate their complaints alleging misconduct by civilian BPD employees.</p> <p>This has become more frequent as BPD has increased the activity of its non-sworn personnel such as FIOs, CSO, CISs, and Ambassadors.</p> <p>The Office of General Counsel has opined that OIPA may investigate collateral allegations against civilian employees when there has been a complaint against a sworn officer, which process and authority should be codified in the Model.</p> <p>Importantly, it would be challenging for OIPA to investigate additional complaints against civilian BPD employees with existing resources. However, because OIPA monitors investigations being conducted by the BPD Internal Affairs Bureau, there already exists some connection between the intake of these complaints and the OIPA workload.</p> <p><b>BENEFIT:</b> OIPA will be more responsive to the needs of the people we serve by conducting independent investigations upon request and/or OIPA will be better able to explain the reasons that allegations of misconduct by civilian employees of the department, including dispatchers, should only be reviewed by the Internal Affairs unit.</p> <p><b>IMPACT:</b> May significantly increase workload for the IPA. Increased transparency.</p>