

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: Board of Directors

DATE: August 15, 2019

FROM: Independent Police Auditor

SUBJECT: Update re Revised Citizen Oversight Model Implementation

As required by the BART Citizen Oversight Model (Model) Chapter 3-01, the Office of the Independent Police Auditor (OIPA) engaged the OIR Group in January 2017 to conduct a review and evaluation of the BART oversight system intended to determine whether there was a need to adjust the system to improve its continued performance. The OIR Group completed its review in June 2017 and submitted a report to the Board of Directors (Board) including 54 recommendations for improvements. Over the course of two meetings in March and April 2018 the Board voted to implement 50 of the recommendations and requested a report from OIPA, the Chief of Police, and the General Manager to review the implementation process and fiscal impact of the revised Model. The revised Model was ratified by the Board at its June 28, 2018 meeting.

Please refer to the attached OIPA Impact Assessment Matrix, which includes the language of each OIR Group recommendation that was incorporated into the revised Model and/or resulted in adjustments to BART Police Department (BPD) policies and/or OIPA internal practices. Generally, OIPA has seen a workload increase in some areas, requiring some shifting of priorities and some redistribution of responsibilities within the department, but very few recommendations have been deemed impractical to implement at this time using available OIPA resources.

In the year since OIPA began working with BPD and revising BPD policies and OIPA practices to comply with the requirements of the revised Model, there has been no significant direct fiscal impact to OIPA and we did not exceed our budget during the 2018-2019 fiscal year despite some atypical expenses related to staff training, production of informational materials, and community outreach efforts.

OIPA will defer to the General Manager to report whether his department has experienced any fiscal impact from the implementation of the revised Model and related adjustments to policy and practice, but discussions with the General Manager indicate that there has been no notable impact. BPD replied to OIPA inquiries regarding fiscal impact by stating that the changes to the Model have served to bolster transparency and accountability with no significant fiscal impact to the Police Department. The Office of the General Counsel (OGC) was also engaged in the incorporation of the implemented recommendations into the final language of the revised Model and experienced no fiscal impact beyond that engagement and effort by OGC staff.

Though not specifically requested by the Board, it stands to reason that there has been some fiscal impact to the Office of the District Secretary (DSO) as that department has absorbed the staff support function for the BART Police Citizen Review Board (BPCRB), including the addition of

a Principal Administrative Analyst (PAA) to perform those functions.¹ The DSO has estimated substantial annual related costs of approximately \$10,000 including BPCRB member travel to an annual conference (this \$3500 line item will be ported from OIPA's budget), BPCRB Clipper Cards, BPCRB meeting refreshments, BPCRB signage and office supplies, DropBox document management/transmission accounts, and annual BPCRB membership fees to the National Association for Civilian Oversight of Law Enforcement (NACOLE). The DSO is also paying overtime for two staff members to attend monthly BPCRB meetings. As a practical matter, DSO staff and managers other than the PAA have spent time becoming familiar with BPCRB processes and files, including the Citizen Oversight Model.

The Board also requested an opportunity to revisit the 4 OIR Group recommendations that were deferred and not implemented in 2018. These deferred recommendations include the following:

Recommendation #1: The Model should be revised to make clear that the scope of OIPA's authority extends to non-sworn employees of BART PD and to all potential misconduct involving sworn officers whether on or off duty.

- Because OIPA is not authorized to independently investigate complaints of misconduct related to non-sworn BPD employees, we have deferred all complaints identifying BPD Fare Inspectors, Community Service Officers, and Dispatchers to the BPD Internal Affairs Division (IA) for investigation. OIPA continues to monitor those referred IA investigations to ensure that they are timely, thorough, fair, and objective. OIPA is not currently authorized to independently investigate any allegation of off-duty misconduct but retains the authority to review any administrative investigation conducted by IA, which could include review of off-duty conduct.

Recommendation #3: Should OIPA move to real-time monitoring, it should be involved in decisions regarding whether a matter should be forwarded to the District Attorney for criminal review, and the appropriate scoping of an investigation.

- As a practical matter, OIPA is engaged in the real-time monitoring of IA investigations and OIPA has been and remains ethically obligated to forward information regarding any potentially criminal conduct to the District Attorney via the BPD chain of command, therefore implementation of this recommendation would have no impact on current practices.

Recommendation #12: When a concluded investigation does not result in a sustained finding, OIPA should offer the complainant the opportunity to view any video account of the incident.

- Though this would result in significant additional work for OIPA related to the maintenance of confidentiality (e.g. video redaction, audio redaction), changes to state law resulting from SB 1421 and AB 748 have increased public access to video related to significant uses of force and other sustained allegations of misconduct.

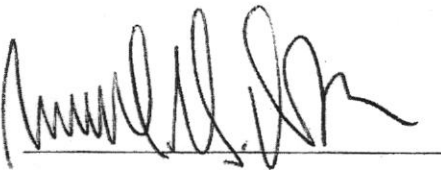
Recommendation #22: The Model should be revised to require BART to apprise OIPA of any offers to settle cases after discipline has been imposed and provide the Auditor an opportunity for consultation. The Model should provide the Auditor the opportunity to appeal any intention to

¹ The addition of the PAA has also enabled the DSO to provide support to the Transit Safety Advisory Committee.

settle the matter to the General Manager should the Auditor find that the settlement would amount to a serious erosion of individual accountability. The Model should require the Auditor to publicly report on any cases settled at the post-discipline stage and whether OIPA agreed with the decision to settle.

- Implementation of this recommendation would provide the District an opportunity to collect the impressions of the Auditor in a limited number of circumstances, and any public reporting would not run afoul of either officers' privacy protections or OIPA's requirement to maintain confidentiality of records where appropriate.

The color-coded Impact Assessment Matrix mentioned above is attached hereto for your reference and convenience. If you have any questions or concerns, please contact me at 510-874-7471.

A handwritten signature in black ink, appearing to read 'Russell G. Bloom', written over a horizontal line.

Russell G. Bloom

cc: Board Appointed Officers