



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**February 10, 2016
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL

2. APPROVAL OF AGENDA

3. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)

4. APPROVAL OF MINUTES

Regular Meeting of January 27, 2016

5. CHAIR'S REPORT

6. CHIEF OF POLICE'S REPORT

Budget, staffing, training updates, and other items.

7. PRC OFFICER'S REPORT

Status of complaints; announcements.

8. OLD BUSINESS (discussion and action)

- a. Policy Complaint #2362 & #2363 – McKinley Avenue staging: Status report from BPD regarding changes to policies and procedures to ensure residents' concerns are considered when BPD must stage personnel and equipment outside the Public Safety Building and its parking lot.
- b. PRC Regulations For Handling Complaints Against Members of the Police Department: status of meet-and-confer between City and BPA; response to inquiry re PRC Chair sitting in on meet-and-confer; proposal to enter into an MOU with Berkeley Law on a Standards of Proof Collaboration.
- c. Amend Standing Rules to include guidelines and process for appointing non-PRC members to PRC subcommittees.

- d. Fair & Impartial Policing training for community on April 9, 2016: which Commissioners will attend; authorize Commissioner Bernstein to continue representing PRC in planning.

9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Plan for implementation of Council directive regarding PRC and BPD recommendations following BPD response to December 6, 2014 protests.
- b. Chief's consideration of sustained allegations in a PRC Board of Inquiry, and relationship to discipline imposed following Internal Affairs investigation of the same incident.
- c. Whether to undertake a policy review of the BPD's involvement in the actions against Liberty City in December 2015, and if yes, what priority it should have, and how the commission should proceed.
- d. Prioritization of PRC's requests to BPD.

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion and action)

- a. Body-Worn and Dash Cameras Subcommittee
Update; schedule next meeting date
- b. General Orders C-64, etc. Subcommittee
First meeting February 11, 2016 at 5:30 p.m.
- c. December 7 & 8 Investigation Subcommittee
Update. Next meeting date February 24, 2016, at 5:30 p.m.
- d. Transgender G.O. Subcommittee
Renew subcommittee (formed February 25, 2015)

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

13. ADJOURNMENT

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**Communication Access Information (A.R.1.12)**

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SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 3rd floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

COMMUNICATIONS FOR PRC REGULAR MEETING February 10, 2016

MINUTES

January 27, 2016 *Regular Meeting*

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COMMUNICATIONS

Communication #1815 – Memorandum of Understanding regarding Standards of Proof of Collaboration Page 10

Communication #4331 – Appointment of Members to PRC Subcommittees Page 12

Communication #4331 – Proposed language regarding appointment of members of the public to PRC subcommittees Page 14

Communication #4400 – City Council Action Calendar – Old Business, from January 26, 2016 Annotated Agenda Page 15

Communication #4400 – Supplemental communications to Council regarding report of investigation into the Police Department's response to protests on December 6, 2014 Page 16

Communication #1800 – PRC requests to BPD Page 24

Communication #4411 – Inventory of Less-than-Lethal Weapons and Munitions Page 25

Communication #4160 – Police Review Commission Subcommittees List updated 1-28-16. Page 26

KJL:meb



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(unapproved)

January 27, 2016
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:09 P.M.

Present: Commissioner Alison Bernstein
Commissioner Jerry Javier
Commissioner George Lippman
Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts
Commissioner Michael Sherman
Commissioner Kad Smith
Commissioner Ayelet Waldman
Commissioner Ari Yampolsky

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Cynthia Harris, Lt. Dan Montgomery, Sgt. Ben Cardoza, Sgt. Sean Ross, Sgt. Samantha Speelman

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were three speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of January 13, 2016

Moved/Seconded (Bernstein/Roberts) Motion **Carried**

Ayes: Bernstein, Lippman, Perezvelez, Roberts, Sherman, Smith, Waldman and Yampolsky

Noes: None

Abstain: Javier

Absent: None

5. ELECTION OF 2016 VICE-CHAIR (discussion and action)

Motion to nominate Terry Roberts for Vice-Chairperson

Moved/Seconded (Bernstein/Yampolsky)

Motion to nominate George Lippman for Vice-Chairperson

Moved/Seconded (Sherman/Javier)

Aye votes for Commissioner Roberts: Bernstein, Perezvelez, Roberts, Waldman, and Yampolsky

Aye votes for Commissioner Lippman: Javier, Lippman, Sherman, and Smith

Terry Roberts was elected Vice-Chairperson

6. CHAIR'S REPORT

-- Last night [January 26] Commissioners Perezvelez and Bernstein and PRC Officer Lee presented the PRC's report of investigation on the BPD's response to the December 6, 2014 protests at the City Council meeting; Council gave direction to implement recommendations PRC and BPD agree on, and work to seek consensus on those we have differences on. Osha Neumann's letter on interpreting state law re mutual aid was referred to the City Manager/City Attorney.

-- Commissioner Bernstein announced that the PRC cannot co-sponsor the Fair and Impartial Policing training for the community as it previously voted to do, because it will be by invitation only, which would violate the Brown Act. The PRC can continue to support. She has been meeting with organizers.

7. CHIEF OF POLICE'S REPORT

Captain Harris announced that the annual crime report will be presented to the Council in March.

Questions:

-- What is BPD doing to implement the new use-of-force (UOF) reporting rules in AB 71? BPD is looking at how to modify their current reporting to comply with the new mandate. BPD is currently collecting the data; they are aware the reporting will have to cover incidents beginning Jan. 1, 2016. Unsure how new law affects how BPD reports UOF during demonstrations.

-- Any report back from CPE yet? No.

-- Status of report to PRC under GO C-1? Has been assigned to someone in BPD.

8. PRC OFFICER'S REPORT

-- One new complaint filed since last meeting.

-- Reminder for RSVPs to conference on April 7 sponsored by Oakland CPRB.

9. OLD BUSINESS (DISCUSSION AND ACTION)

a. PRC Regulations For Handling Complaints Against Members of the Police Department: Review proposed regulation changes; status of meet-and-confer between City and BPA; possible implementation of some regulations pending that process; consider establishment of subcommittee; PRC Officer's report on BOIs held within 120 days of complaint filing.

By general consent, the Commission asked the PRC Officer to inquire of the City Manager why the PRC Chair is not included in the current meet-and-confer on proposed Regulations changes.

- b. Transgender General Order
Status report from Commissioner Perezvelez; possible appointments to Transgender G.O. Subcommittee.
(Heard following Item #10.a.)

The Chair added Commissioner Javier to this Subcommittee (he has been taken off the Dec. 7 & 8 Investigation Subcommittee).
PRC Officer to schedule a Subcommittee meeting.

- c. Further discussion and action regarding prioritization of, and method of proceeding on, items on PRC's priority list, including which subcommittees should meet first.

Subcommittees that are a priority are the Body-Worn and Dash Cameras, General Orders C-6, etc., and December 7 & 8 Investigation Subcommittees. Transgender G.O. Subcommittee should not need much time. Fair & Impartial Policing Subcommittee important, but scheduling difficult at this time. Media Credentialing Subcommittee activity can be put on hold for now.

10. NEW BUSINESS (discussion and action)

- a. Amend Standing Rules to include guidelines and process for appointing non-PRC members to PRC subcommittees.
(Heard following Item #10.c.)

Motion to adopt all recommendations for appointing members of the public to PRC subcommittees except #3.

Moved (Sherman). Motion died for lack of second.

By general consent, this matter will be agendaized for the next meeting, and Commissioners who wish to propose alternative language for #3 should submit it to the PRC Officer.

- b. Whether to undertake a policy review of the BPD's involvement in the actions against Liberty City in December 2015, and if yes, what priority it should have, and how the commission should proceed.
(Heard following Item #9.a.)

By general consent, the Commission asked the PRC Officer to find out who authorized the removal of Liberty City, before further action is taken.

- c. Amend Standing Rules to establish when public comment will be heard: at the beginning and end of the meeting; before each agenda item; or other.

Motion to amend the Standing Rules to provide that before an agenda item is heard, the Chair or Vice-chair may poll members of the public present to determine if a significant number of them wish to speak on a particular

agenda item and, if so, move that public comment on that item can be heard just before the item.

Moved/Seconded (Bernstein/Waldman) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Sherman, Smith, Waldman and Yampolsky

Noes: None

Abstain: None

Absent: None

- d. Inquire of the BPD what rules or guidelines are in place to determine when the sidewalk is being blocked.
(Heard following Item #9.c.)

By general consent, the Commission asked the PRC Officer to request an opinion from the City Attorney as to what constitutes blocking the sidewalk under Penal Code section 647(e).

- e. Audit or inventory of BPD's less-than-lethal weapons.

By general consent, the Commission asked the PRC Officer to ask the BPD to provide an inventory of less-than-lethal weapons and munitions for those weapons.

- f. Review commendations of BPD personnel from January through June 2015, and identify those worthy of particular recognition.

By general consent, the Commissioners singled out the following officers and other BPD staff for special recognition; and asked the PRC Officer to write a letter to the Chief informing him of such and to publish their names in the meeting minutes:

Ofc. Lyle Ledward (three times)

Ofc. Jennifer Coats (twice)

Sgt. Todd Sabins

Ofc. Rush Jackson

Ofc. Beau Hunt (twice)

Ofc. Timothy Kaplan

Ofc. Scott Castle

Ofc. Brandon Butler

Ofc. Aron Belveal (twice)

Sgt. Jeffrey Chu

Sgt. Cesar Melero

Ofc. Brandon Smith

Ofc. Thomas Syto (twice)

Ofc. Brian Waggoner

Ofc. Christopher Waite (twice)

Ofc. Mary Kusmiss

Capt. Cynthia Harris

Capt. Andy Greenwood

Sgt. Patricia Dela Luna

Ofc. Lionel Dozier

Ofc. Erik Keene

Ofc. Greg Michalczyk (twice)

Lt. (now Capt.) Andrew Frankel

Ofc. Anthony Cerletti

Ofc. Earl Emelson (twice)

Ofc. Joel Del Rosario

Ofc. Michael Yu

Sgt. Jennifer Wilson

Ofc. Joshua Smith

Ofc. Corey Shedoudy

Sgt. Melanie Turner

Ofc. Derek Radey

Ofc. Skyler Ramey

Ofc. Benjamin Phelps

Ofc. Darren Kacalek

Ofc. Miguel Salazar

Ofc. Devin Hogan

Ofc. Kevin Kleppe

**Ofc. Brian Hartley
Ofc. Heriberto Diaz
Ofc. Jaylon De Bruin**

**Ofc. Jason Collier
Sgt. Van Huynh**

11. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion and action)

a. Body-Worn and Dash Cameras Subcommittee

Subcommittee Chair George Lippman updated Commissioners about the group's work. The Council worksession to hear the item has been changed from March 29 to a later date to be determined.

b. Subcommittee assignments and possible reassignments

(Already discussed in conjunction with Item #9.c.)

c. Schedule subcommittee meetings, depending on outcome of discussion in Item #9.c. above

The General Orders C-64 etc. Subcommittee will meet on Thursday, February 18, 2016, at 6:00 p.m.

12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

13. PUBLIC COMMENT

No speakers.

14. ADJOURNMENT

By general consent, the meeting was adjourned at 9:55 p.m.

Memorandum of Understanding

To: *George Perceval*
Alison Bernstein, Berkeley Police Review Commission
From: Policy Advocacy Clinic, Police Accountability Project
Re: Standards of Proof Collaboration
Date: February 3, 2016

Dear Ms. Bernstein:

The Policy Advocacy Clinic (“Clinic”) is pleased to collaborate with you to advance the Berkeley Police Review Commission’s (“PRC”) goals of encouraging respect for community standards among police officers. This letter is intended to outline the terms of the collaboration.

The PRC is a nine-member commission established in 1973 to conduct investigations and hearings on complaints of police misconduct, and to recommend relevant policy to the chief of police and city manager.

The Clinic is a teaching law office where interdisciplinary teams of law and public policy students pursue innovative, multimodal and systemic strategies on behalf of underrepresented individuals and groups to advance social justice, equity and inclusion. The students’ work is conducted under the supervision of Clinical Professor of Law Jeffrey Selbin and Clinical Teaching Fellow Stephanie Campos-Bui.

Although the Clinic will not be acting as a legal representative to you or to the PRC, the Clinic agrees to research and write a memo for you by the end of the academic semester on Tuesday, April 26, 2016. Our collaboration may include sharing draft work product throughout the semester and phone calls to discuss ideas and receive feedback from one another.

The memo will generally address the standard of proof in PRC Board of Inquiry hearings, and may include the following elements:

1. Legal analysis, including applicable federal, state and local statutes, cases, ordinances and regulations that apply to standards of proof.
2. Descriptive analysis, including the standard of proof used by police review commissions in other California charter cities and in other administrative settings.
3. Comparative analysis, including the attributes and trade-offs of key standards of proof in civil settings (“clear and convincing evidence” and “preponderance of the evidence”)
4. Recommendations, if any, about best public policy practices with respect to standards of proof used by police commissions in appeals.

The exact structure and content of the memo will likely change in response to research findings and in consultation with you over the course of the semester. Research may include submission of Public Record Act requests; reviewing public records and information; surveying police, review board commissioners, advocates and other experts; and consulting relevant statutes, case law, secondary sources, and public documentation of individual standards of review.



All work will be completed and submitted to you no later than Tuesday, April 26, 2016, at which time this collaboration will end. The Clinic does not currently agree to present the memo to the Berkeley City Council or its members, although we may agree to do so in the future.

The Clinic will be closed during the summer holidays, but the collaboration may be renewed or continued upon written agreement between the Clinic and you or the PRC, beginning Wednesday, August 17, 2016.

This agreement does not constitute an engagement by the Clinic to represent you or the PRC in either an individual or group capacity. Nevertheless, we will treat our communications with you confidentially, unless you give us express permission otherwise.

Although the Clinic is collaborating with you and the PRC in this matter, you will be the primary contact with the Clinic for the purposes of this collaboration. You will support the Clinic in completing the aforementioned work. This may consist of, but is not limited to, providing feedback on written documents, aiding in strategic decisions and meeting with the students as needed. The Clinic or you may withdraw from this collaboration if the other party fails to fulfill its obligations under this agreement.

You understand that the Clinic is responsible only for work undertaken during the period of this collaboration for the express purposes set forth in this letter. The Clinic will not charge a fee for this collaboration.

If everything in this letter is agreeable to you, please sign in the space marked below and return one fully executed original to me.

Sincerely,

Date: _____
Jeff Selbin, Director
Policy Advocacy Clinic

AGREED TO AND ACCEPTED BY:

Date: _____
Alison Bernstein, Chair
Berkeley Police Review Commission

February 3, 2016

To: PRC

From: Terry Roberts

Re: Appointment of Members to PRC Subcommittees

Commissioners,

I support more community involvement in the PRC process. But I don't support giving non-commissioners voting rights in subcommittees. I believe it is not in the spirit of Berkeley's commissioner appointment process where Council members appoint voting members to commissions. It has the effect of diluting the vote and shifting policy making and other PRC responsibilities away from duly appointed PRC members.

Based on the proposed language we saw at our last meeting an example of my concern follows: A subcommittee has 4 PRC members and 3 nonmembers who can vote. If 3 PRC members are absent then 1 PRC member (the acting chair in this example) and the other community members could advance a policy recommendation or issue to the PRC thereby circumventing the participation of the other 3 PRC members. Or if all members are present 1 PRC member and the three community members could send a proposal to the PRC even if the other 3 PRC members voted against it. Other similar scenarios can be constructed that could add confusion and possibly divisiveness to the process, which I believe would not be in the best interests of the PRC. Therefore, establishing such a process would be counterproductive in my opinion.

Currently the public can fully participate in our subcommittee process. Frequently if a small group attends we suspend the rules and turn the meeting into a free discussion of the issues where the community can speak more at length and participate outside of the constraints of the 3 minute public comment period. I think this process is effective and can continue to work well in the future without change.

Therefore, my first choice is for no change to the current process. But as an alternative, if a majority of the PRC feels otherwise, I have outlined below a process that would be more inclusive of public involvement but would not authorize any additional voting members. (My edits are on the original language presented to us in our last meeting with my changes shaded.)

APPOINTMENT OF ~~ADVISORY~~ MEMBERS OF THE PUBLIC TO PRC SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the chairperson may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission.
2. Members of the public seeking to serve on a subcommittee must present themselves at a commission meeting before or at the time of the appointment.
3. Members of the public appointed to subcommittees shall ~~enjoy the same~~

~~voting rights and privileges on the subcommittee, as that of PRC commissioners appointed to the subcommittee, except that public members may not be selected to be the subcommittee chair.~~ act in an advisory capacity to the subcommittee. While advisory members are not voting members they may participate in all discussions as if they were PRC members, contribute suggestions and ideas for PRC policies and actions, and prepare written material for subcommittee consideration.

4. Commission members must constitute a majority of the membership of any subcommittee, ~~but a subcommittee may convene and conduct business even if commissioners are not a majority of subcommittee members present.~~ and have a voting member quorum before any subcommittee action can be taken. Prior to any formal action by the PRC subcommittee members present, the advisory subcommittee members can express their individual opinions on the issue, or vote amongst themselves to express a collective position or recommendation to the subcommittee on the pending motion.

5. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. (Not clear why needed?)

6. If a subcommittee must be reauthorized, ~~any members of the public serving on the subcommittee must be reappointed by the chairperson, subject to the approval of the commission.~~ those former advisory members wishing to serve as advisory members to the re-authorized subcommittee shall reapply along with others that are interested in serving.

7. A public advisory member of a subcommittee who is absent from three consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the chairperson, ~~with PRC approval,~~ if good cause for the absences is shown.

8. Upon recommendation of a majority of voting members of the subcommittee, the PRC chairperson, subject to the approval of the commission, may remove a member of the public from a subcommittee for good cause. Examples of good cause ~~are~~ shall include but are not limited to: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.

9. All actions by the chairperson to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a commission meeting.

In summary, I recommend that:

1. As a first choice we leave the current process for community participation as is and that no new voting members be authorized.
2. As a second choice, if the majority of the PRC thinks more direct community involvement is needed, I encourage the PRC to adopt the draft policy outlined above, or something very similar to it.

Terry Roberts, Commissioner

FROM COMMISSIONER PEREZVELEZ

MY PROPOSED LANGUAGE

APPOINTMENT OF MEMBERS OF THE PUBLIC TO PRC SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the chairperson may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission.
2. Members of the public seeking to serve on a subcommittee must present themselves at a commission meeting before or at the time of the appointment **and speak on the public record on intent to serve and what they will bring to the subcommittee work and deliberations.**
3. Members of the public appointed to subcommittees shall enjoy the same voting rights and privileges on the subcommittee, as that of PRC commissioners appointed to the subcommittee, except that public members may not be selected to be the subcommittee chair.
4. Commission members must constitute a majority of the membership of any subcommittee, but a subcommittee may convene and conduct business even if commissioners are not a majority of subcommittee members present. **Quorum will not be based on the attendance by a community member as they will be considered AD HOC members**
5. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee.
6. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the chairperson, subject to the approval of the commission.
7. A public member of a subcommittee who is absent from **two** consecutive subcommittee meetings is automatically removed from the subcommittee, but may be re-instated by the chairperson if good cause for the absences is shown.
8. The chairperson, subject to the approval of the commission, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
9. All actions by the chairperson to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a commission meeting.

From Tuesday, January 23, 2016, ANNOTATED AGENDA, Pages 4 - 5

Action Calendar – Old Business

11. a. Report of Investigation Into the Police Department Response to Protests on December 6, 2014 *(Continued from December 15, 2015)*

From: Police Review Commission

Recommendation:

1. Accept the Police Review Commission's investigative report into the Berkeley Police Department's response to the protests of December 6, 2014; and
2. Refer the report to the City Manager for implementation of the recommendations.

Financial Implications: Unknown

Contact: Katherine Lee, Commission Secretary, 981-4950

11. b. Response to PRC Report on BPD Response to December 6 Protests, Revision of Police Crowd Management Policies *(Continued from December 15, 2015)*

From: City Manager

Recommendation: Direct the City Manager to have the Berkeley Police Department collaborate with the Police Review Commission to further develop mutually agreed upon revisions to the Berkeley Police Department's policies and procedures regarding response to protest activity and to report back to the Council within 180 days for an update.

Financial Implications: None

Contact: Michael Meehan, Police, 981-5900

Action: 16 speakers. M/S/C (Droste/Capitelli) to:

1. Accept the Police Review Commission report on BPD response to December 6, 2014 Protests.
2. Direct the City Manager to begin the process of implementing reforms by working with BPD and PRC to refine the language of the agreed upon recommendations.
3. Direct the City Manager to work with BPD and the PRC to continue to seek consensus in areas of disagreement.
4. Direct the City Manager to provide a progress report every 90 days including a timeline for implementation.

Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.

Action: M/S/C (Droste/Capitelli) to:

5. Refer the October 19, 2015 letter from Osha Neumann to the City Manager for evaluation.

Vote: Ayes – Maio, Arreguin, Capitelli, Worthington, Droste; Noes – Moore, Wengraf, Bates; Abstain – None; Absent – Anderson.

Harris, Leslie D.

From: Andrea Prichett <prichett@locrian.com>
Sent: Wednesday, November 25, 2015 10:03 AM
To: All Council
Subject: Berkeley Copwatch INvestigation of Black Lives Matter Protest of December 6, 2014

Dear City Council Members,

I am writing to you in advance of the December 1st City Council meeting at which you will receive a Police Review Commission report on the police response to the Black Lives Matter protest of December 6, 2015. The Police Review Commission has done an admirable job of reviewing the evidence provided to them by the BPD and its report on the protest response. However, the PRC has been unable to hold any individual officers accountable for their wanton aggression against non-violent demonstrators. Cops who assaulted people who were within their rights to be present on the street will not suffer any consequence for their actions. If you follow the link we have provided, you will be able to see for yourself how the police response, rather than protecting the peace and safety of our community, became the single greatest threat to us and caused numerous injuries through its beating, gassing, and shooting of "less lethal" munitions. Sadly, what also becomes clear is that BPD leadership escalated events at many points and we do not believe that the few incidents of individuals throwing objects at police officers justifies the mass gassing of hundreds of people and the indiscriminate shooting of munitions at retreating demonstrators.

One aspect of problem concerns the militarization of our police department under the leadership of Chief Michael Meehan. I know that many of you have lived in Berkeley long enough to know that in years past, our police department was able to facilitate peaceful protest and deal strategically with incidents of property destruction or violence by individuals. In fact, there was a time when BPD leadership valued its relationship with the community and worked to develop forms of community policing. Such is no longer the case and the perception of the BPD is that it is a department that is out of touch with the needs of our community including how to deal with people with mental health issues, homeless people, people of color and of course, protesters.

We hope that this incident and a careful review of our investigation will lead you to question the current leadership of BPD and evaluate the increasingly militarized direction of the current leadership.

Thanks for your consideration,

Andrea Prichett

Berkeley Copwatch

To view the People's Investigation:

<http://berkeleycopwatch.org/timeline/>



EAVP Office of the
External Affairs
Vice President

January 26, 2016

Mayor Tom Bates and Members of the Berkeley City Council
New City Hall
2180 Milvia Street
Berkeley, CA 94704

RE: ASUC Support Police Review Commission Items (11a and 11b)

Dear Honorable Mayor Bates and Members of the Berkeley City Council,

My name is Marium Navid and I am the External Affairs Vice President of the Associated Students of the University of California, the official voice of 38,000 Berkeley students. I am writing to urge you to vote in favor of Items 11a - Report of Investigation Into the Police Department Responds to Protests on December 6, 2014, and 11b - Response to PRC Report on BPD Response to December 6 Protests, Revision of Police Crowd Management Policies.

Berkeley needs to be able to set an example for other police departments. Many students that were present at the action of December 2014 were affected by the lack of leadership by the police department. This investigation seeks to create a more progressive police department by passing recommendations that will improve the leadership of the department. We need to hold the police department accountable and passing the investigation made by the Police Review Commission will do so. Failing to pass the item will delegitimize the mission of the Police Review Commission of being an independent police oversight committee.

Sincerely,

Marium Navid
External Affairs Vice President
Associated Students of the University of California



ASUC
**SENATOR
VICENTE**

January 26, 2016

Mayor Tom Bates and Members of the Berkeley City Council
New City Hall
2180 Milvia Street
Berkeley, CA 94704

RE: Police Review Commission Investigation (Items 11a and 11b)

Members of the Berkeley City Council,

My name is Boomer Vicente. I am a Senator of the Associated Students of the University of California and a former member of the Police Review Commission. I urge you to vote in favor of Items 11a - Report of Investigation Into the Police Department Responds to Protests on December 6, 2014, and 11b - Response to PRC Report on BPD Response to December 6 Protests, Revision of Police Crowd Management Policies.

Berkeley needs to be able to set an example for other police departments. Many of my constituents were present at the December 6 protests were negatively affected - even physically injured - by the lack of leadership by the police department. By passing recommendations that will improve the leadership of the department, this investigation can help create a more progressive and effective BPD. We need to hold the police department accountable, and passing the investigation made by the Police Review Commission will do so.

Finally, failing to pass these items will delegitimize the mission of the Police Review Commission as an independent police oversight committee, which must not be allowed to happen. As a former member of the commission, I would be particularly distressed by such a development.

Sincerely,

Boomer Vicente
Senator | Associated Students of the University of California
Former Member | City of Berkeley Police Review Commission

Harris, Leslie D.

From: Gene Herman <dee3g1@earthlink.net>
Sent: Monday, January 25, 2016 10:07 AM
To: All Council; clerk@CityofBerkeley.info
Subject: Resolution for Police Reform
Attachments: ATT57693.doc

Resolution for Police Reform

WHEREAS, Unitarian Universalist congregations covenant by our Principles to honor the inherent worth and dignity of all persons, to affirm and promote justice, equity and compassion in human relations, to uphold the use of democratic process, the goal of peace, justice, and world community, and respect for the interdependent web of existence; and

WHEREAS we the citizens of the City of Berkeley in order to attain an educated, responsible, accountable, and non-militarized Police Department, acknowledge the need for Community Policing, and hereby present this Resolution to the Berkeley City Council;

THEREFORE BE IT RESOLVED:

- * That the City of Berkeley give preference to hiring Berkeley residents for our Police Department.**

- * All recruits, prior to entering the Police Academy, be tested for [working] knowledge of the rights of citizens and residents enshrined/acknowledged in the U.S. Constitution and the Bill of Rights.**

- * That all recruits undergo and pass an independent psychological evaluation regarding previous emotional history, especially in regard to violent military experiences, including PTSD trauma, as well as, bigotry and or bullying tendencies. The test should be done on an initial and periodic basis.**

Mental health counseling by independent professionals should be available and required for officers who display antisocial uncivilized behavior towards residents.

[oversight of this process by the Police Review and Peace and Justice Commissions]

* That all recruits be trained in and acknowledge the requirement to **respect the rights** of all persons, with special attention to persons of color, the poor, the homeless, the LGBTQ community, and those with mental health and other disability issues. Said training must include detailed instruction in all methods of de-escalation and crisis intervention.

* The Academy and the Department train all recruits and officers to use their words to de-escalate the situation before taking their gun out of their holster.

* That the BPD **not accept any transfers** from other Police Departments who have a history of violence, bullying or bigotry.

*There is absolutely no need for the purchase or acquisition of military weapons or equipment or military-type surveillance in Community Policing.

* The Police Department must re-evaluate its philosophy that orders all officers to "shoot to kill".

*That the Police Department acquire and consistently use body cameras that stream continuously.

* That the Police Review Commission be given the authority to terminate officers for violation of Police Department procedures.

*The Police Department ban the indiscriminate use of tear gas, sound cannons, or other dangerous "crowd control" devices.

* The BPD have and maintain total control when utilizing outside Police units.

Berkeley Fellowship of Unitarian Universalists

Congregational Study Action Issue/UUA –Escalating inequality. Jan 19, 2016

Gene B. Herman

BFUU- Social Justice Committee

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JAN 26 2016

To: Berkeley Police Review Commission
From: Osha Neumann, Esq.
Date: October 19, 2015

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

I write in response to the PRC's recent conclusion that "state law and existing mutual aid pacts require each agency to follow its own policies re use of force....therefore the BPD cannot enforce its use-of-force policies on mutual aid responders."

At a minimum, the latter statement is incorrect. California Govt. Code § 8618 provides that the responsible local official in whose jurisdiction an incident requiring mutual aid has occurred shall remain in charge at such incident including the direction of personnel and equipment provided him through mutual aid.¹ See also the California Master Mutual Aid Agreement.²

Therefore, host agencies have not only the right, but also the responsibility to supervise the performance of invited agencies.

Moreover, if BPD requests mutual aid and its failure to adequately supervise and control the assisting agencies leads to injuries and violations of constitutional rights the City of Berkeley and its commanders may be held liable under federal law.³

It is also not clear that state law requires each agency to follow its own use of force policies in a mutual aid situation. The citation given for this claim refers not to state law but to a policy manual, the Law Enforcement Guide for Emergency Operations, under a section titled "Administrative Guidelines." The Guide shows no citation to state law.

The mandate that the host agency supervises the performance of invited agencies explicitly extends to the direction of personnel and equipment. This state law provides the basis for the instruction in the California Law Enforcement Mutual Aid Plan that the jurisdiction requesting mutual aid is responsible for among other things "advising responders what equipment they should bring."⁴

Finally, under the above-cited state law, the 1992 mandate passed by the Berkeley City Council is legally valid and should be considered governing in Berkeley's participation in mutual aid. It mandates that:

"The BPD take direct supervisory responsibility for all mutual aid units deployed to the maximum amount allowable by law...advise such units that they will be expected to comply with [BPD] regulations and policies," and that if there are conflicts with other agencies over policies which cannot be resolved, "BPD reserves the right to elect not to deploy those units affected....where the City of Berkeley has adopted more stringent standards, those will take precedence over county-wide standards within Berkeley."⁵

I urge the PRC and the City Council to uphold California and Berkeley law on mutual aid. BPD has a right and also a civic and moral responsibility to local residents, to ensure policing be conducted according to local community standards.

Sincerely yours,

Osha Neumann, Esq.

¹ <http://www.lawlink.com/research/Level2/50475>

² <http://www.caloes.ca.gov/PlanningPreparednessSite/Documents/CAMasterMutAidAgreement.pdf>

³ Pursuant to *Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978) (See, e.g., *Jennings v. City of Miami*, 2009 U.S. Dist. LEXIS 5430, 2009 WL 413110 (S.D.Fla. 2009) [*Monell* claim stated based on City's adoption and implementation of mutual aid agreements for policing of demonstrations during FTAA meetings] and basic principles of supervisory liability. As the Ninth Circuit has held, a "defendant may be held liable as a supervisor under § 1983 'if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989). "The requisite causal connection can be established . . . by setting in motion a series of acts by others," . . . or by "knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury," (*Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 968 (9th Cir. 2001).) "A supervisor can be liable in his individual capacity for his own culpable action or inaction in the training, supervision, or control of his subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous indifference to the rights of others." (*Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998).)

⁴ "The agency requesting mutual aid is responsible for the following: 1. Identifying numbers and types of mutual aid resources requested. 2. Identifying specific missions for mutual aid responder tasking. 3. Advising responders what equipment they should bring. 4. Establishing an assembly area for responding resources. 5. Identifying communications channels compatible with command and control of field resources. 6. Designating a liaison officer to facilitate a coordinated assimilation of responding mutual aid resources. 7. Preparing a situation briefing including local maps for responders. 8. Providing logistical support such as food, lodging, rest intervals and equipment maintenance as appropriate, for mutual aid personnel."

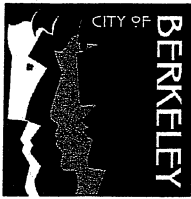
<http://www.caloes.ca.gov/LawEnforcementSite/Documents/1Blue%20Book.pdf>

⁵ <http://www.berkeleyside.com/wp-content/uploads/2015/02/2003-09-09-Item-54-57.pdf>

PRC requests to BPD

	Date/form of request	Request	Status/Notes
1.	Mid-2015	McKinley Ave. staging – follow-up	Capt. Greenwood to present at 2.10.16 meeting
2.	8.27.15 letter	Smoking Ordinance/dissemination of info to officers re new ordinances	At 12.9.15 meeting, PRC did not include in top 10 priorities.
3.	9.5.15 letter	Right to Watch G.O.: please revert to old while reviewing the revised policy	At 1.13.15 meeting, Capt. Harris said will present revision for PRC review at its 2.24.16 meeting.
4.	12.9.15 oral	Analysis of new beat plan – when?	At 12.9.15 meeting, Chief said would be another 4 – 6 months (per Lt. Montgomery).
5.	12.9.15 oral	Center for Policing Equity analysis of stop data – when?	At 12.9.15 meeting, Chief said didn't know but will ask. At 1.13.15 meeting, Capt. Harris said CPE still analyzing and won't have update re progress until February.
6.	12.9.15 oral	EBRCS: status of work to establish common encrypted radio channels	
7.	1.5.16 letter	3 new ordinances to "improve conditions on community sidewalks": any plan to issue G.O., T&I Bulletin, or Captain's Instructions?	
8.	1.13.16 oral	G.O. C-1 – request for annual report, as required under the G.O., for the past 3 years.	At 1.27.16 meeting, Capt. Harris reported this has been assigned to a staff member.
9.	1.13.16 oral	Cost analysis to carry out recommendations in Dec. 2014 post-incident review?	BPD will report back at 2.24.16 meeting (?)
10.	2.3.16 letter	Provide inventory of less-than-lethal weapons and munitions	

2.4.2016



Police Review Commission (PRC)

February 3, 2016

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer

Re: Inventory of Less-than-lethal Weapons and Munitions

The Police Review Commission is interested in knowing the number and type of less-than-lethal weapons that the Berkeley Police Department currently has on hand, as well as the number of munitions that you have, for use with those weapons. If any of the weapons are not working, please advise if they are likely to be repaired. When reporting back, please include the date that this inventory is taken.

This request is made in accordance with the action the Commission took, by general consent, at its January 27, 2016 meeting. Thank you.

cc: Police Review Commissioners

POLICE REVIEW COMMISSION SUBCOMMITTEES LIST Updated 1-28-16			
Subcommittee	Commissioners	Chair	BPD Reps / Others
Transgender General Order Formed 2-25-15	Bernstein Perezvelez Javier	<i>Will rotate</i>	Sgt. Melanie Turner Ofc. Ethell Wilson
Body-worn & Dash Cameras Formed 12-9-15	Javier Lippman Roberts Yampolsky	Lippman	Capt. Cynthia Harris Sgt. Joseph Okies
December 7 & 8 Investigation Formed 1-13-16	Bernstein Sherman	Bernstein	PRC Officer Kathy Lee
General Orders C-64, U-2, M-2 Formed 1-13-16	Bernstein Lippman Perezvelez Waldman		Capt. Dave Frankel
Fair & Impartial Policing Formed 1-13-16	Javier Lippman Roberts Smith		Capt. Cynthia Harris
Media Credentialing Formed 1-13-16	Perezvelez Sherman Smith		