

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING**

MINUTES

(unapproved)

**Wednesday, March 23, 2016
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR ROBERTS AT 7:06 P.M.

Present: Commissioner George Perezvelez (Chair) (arrived 8:35 p.m.)
Commissioner Terry Roberts (Vice Chair)
Commissioner Alison Bernstein
Commissioner George Lippman
Commissioner Michael Sherman
Commissioner Kad Smith
Commissioner Ayelet Waldman (left 8:30 p.m.)
Commissioner Ari Yampolsky (left 7:25 p.m.)

Absent: Commissioner Jerry Javier

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Andy Greenwood (left 8:30 p.m.), Sgt. Benjamin Cardoza, Ofc. Samantha Speelman, Ofc. Marcus Dinkins

2. APPROVAL OF AGENDA

The agenda was approved by general consent

3. PUBLIC COMMENT

There were six speakers.

4. APPROVAL OF MINUTES

The PRC Officer noted a correction to p. 3, 8th line, to insert "that the" before "Chair".

Motion to approve Regular Meeting Minutes of March 9, 2016, as corrected.

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

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

Noes: None

Abstain: Smith

Absent: Javier

5. CHAIR'S REPORT

None.

6. PRC OFFICER'S REPORT

- Case deadlines report was distributed. Two new complaints filed since last meeting.
- Next regular meeting 3 weeks, not 2 weeks, from now.
- Reminders: April 7 Oakland CPRB conference -- Commissioners Javier, Lippman, Roberts, Perezvelez, Smith and Investigator Norris signed up to attend. April 9 BPD-sponsored session on fair and impartial policing -- Commissioners Lippman, Roberts, and Smith, and either Javier or Yampolsky to attend.
- PRC Offices moving to 1st floor from 3rd floor of 1947 Center Street as of April 4, 2016.
- HWCAC recommendations affect their commission only, so included in packet as informational item and not agendized for action.
- The PRC Priority List and PRC requests to BPD, prioritized, are found on pp. 33 and 35 of the agenda packet FYI.
- Confirmed that BPD website now informs people that they can file a Public Records Act request by email.
- PRC Officer did have conversations with Mr. Haberfeld in response to his email.

7. CHIEF OF POLICE'S REPORT

Capt. Greenwood reported on Chief Meehan's behalf:

- Staffing at 170 or 171 sworn. Lots of training going on, including 8-hour CIT [Crisis Intervention Team] training. Friday night basketball games at the Young Adult Project have started up again.

Questions:

- Could we get copies of the curriculum for both the 8-hour and 38-hour CIT trainings? Yes.
- Comment on recent shootings? In one case, the suspect turned himself in; case is closed. The other, a double shooting, is under active investigation. They are not connected, nor is either case connected to other activity.
- Mayor's comment on rape kit testing; status? The issue is that they don't know the exact circumstances why a kit didn't get tested in 2008. Current backlog of SART kit tests is zero, of the cases within the statute of limitations. SART [Sexual Assault Response Team] kit testing is biological evidence analyzed and DNA uploaded into CODIS [Combined DNA Index System], a national DNA base. Supported with funding from District Attorney O'Malley. Paradigm change: Where formerly didn't send SART kits for testing when suspect is known (e.g., acquaintance rape), now automatically submit all, recognizing importance of uploading DNA into CODIS so can potentially make a connection. About 200-300 cases more than 10 years old, not prosecutable (beyond statute of limitations); working to clear that backlog.

8. OLD BUSINESS (discussion & action)

- a. Policy complaint: McKinley Avenue staging: BPD presentation of new general order on staging practices; consider closure of complaint.

BPD presented proposed revision to General Order U-4; one complainant made comments; Commission discussed without taking action. *To be continued to April 13, 2016 meeting.*

- b. Implementation of Council directive regarding PRC and BPD recommendations following BPD response to December 6, 2014 protests: consideration of recommendations #1, #14, #15, #28, #31, and #32. 2:04

By general consent, the Commission asked the PRC Officer to write a letter to Chief Meehan asking what steps the department has taken, or plans to take, on recommendation numbers 1, 14, 15, 31, and 32 of the BPD report following the December 2014 protests; the Commission prefers answers in writing and may wish to discuss them at a PRC meeting.

- c. Review of revised General Order W-1 (Right to Watch) proposed by BPD. *(Heard following Item # 8.f.)*

Motion that the Police Review Commission recommend to the Berkeley Police Department that the BPD adopt the existing SFPD General Order 5.07, except that: 1) in Section I.B.2. of that order, the word "investigation" replace "interrogation"; and 2) references to jurisdiction-specific codes and orders be changed to reflect equivalent Berkeley policies.

Moved/Seconded (Bernstein/Sherman)

Friendly amendment to add, "in lieu of the draft General Order W-01."

(Moved by Smith; Accepted by Bernstein and Sherman)

Motion, as amended, carried

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

Noes: None Abstain: None Absent: Javier, Waldman, and Yampolsky

- d. Senate Bill 1286, Increasing Law Enforcement Transparency bill. *(Heard following Item # 8.b.)*

Following discussion, no action taken.

- e. Reports from BPD under General Order C-1, Intelligence Procedures for First Amendment Activities.

Reports received; No action taken.

- f. Possible dates and structure of meeting regarding Liberty City. *(Heard following Item #8.a.)*

By general consent, the Commission decided to hold a hearing on this matter as part of its regular meeting on April 27, 2016. Invite other commissions if they wish to have input but not a joint meeting. Rest of agenda for that date will be kept to a minimum.

(PRC Officer's note: The above action supplements the PRC's decision at its March 9 meeting to invite BPD Capt. Greenwood and Liberty City organizers to each make 20-minute presentations at a PRC meeting.)

9. NEW BUSINESS (discussion & action)

- a. Accept agreed-upon changes to Regulations signed by the Deputy City Manager and the BPA President.

This item was postponed to the next meeting because the changes were not ready.

- b. Consider participating in the Berkeley Juneteenth Festival on Sunday, June 19, 2016. 2:32

By general consent, the Commissioners agreed to participate in Juneteenth, and directed the PRC Officer to make the necessary arrangements to secure a booth or share one.

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. Body-Worn and Dash Cameras Subcommittee
The Subcommittee continues to meet about every couple weeks. The next meeting is tentatively scheduled for April 6.
- b. General Orders C-64, etc. Subcommittee
Been meeting regularly and going well. Next meeting tomorrow night 6 p.m.
- c. December 7 & 8 Investigation Subcommittee
Report given.
- d. Transgender G.O. Subcommittee
No more meetings. Will be bringing a final draft to the Commission for a vote.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

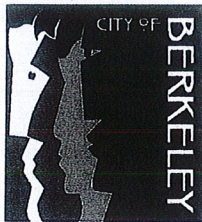
Attached.

12. PUBLIC COMMENT

There was one speaker.

13. ADJOURNMENT

By general consent, the meeting was adjourned at 9:53 p.m.



Office of the City Manager

April 11, 2016

To: Police Review Commission Chair and Commissioners
From: Dee Williams-Ridley, City Manager
Subject: Agreed-Upon Police Review Commission Regulations Changes

I am pleased to report that the City of Berkeley and Berkeley Police Association (BPA) have concluded the meet and confer process and reached agreement on multiple changes to the Police Review Commission (PRC) Regulations for Handling Complaints Against Members of the Police Department. The accepted changes consist of language and grammatical updates, process implements to report, conducting hearings and redactions of superfluous or redundant information. The changes to the PRC regulations became effective on March 28, 2016.

I want to thank the Commission for your patience and recommended changes. I want to thank the BPA for their input and ultimate agreement to incorporate 44 policy changes as recommended by the PRC. I request that the PRC review and accept the final changes to the PRC regulations.

Sincerely,

Gil Dong

Interim Deputy City Manager / Fire Chief City of Berkeley

Attachment: Police Review Commission - Regulations for Handling Complaints Against the Police Department (March 28, 2016)

cc: Dee Williams-Ridley, City Manager
Zach Cowan, City Attorney
Michael Meehan, Police Chief
Katherine Lee, Police Review Commission Officer
Chris Stines, BPA President

Agreed-Upon PRC Regulations Changes

March 23, 2016

[BERKELEY POLICE REVIEW COMMISSION REGULATIONS FOR HANDLING COMPLAINTS AGAINST MEMBERS OF THE POLICE DEPARTMENT]

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Berkeley Police Review Commission Regulations for Handling Complaints Against Members of the Police Department

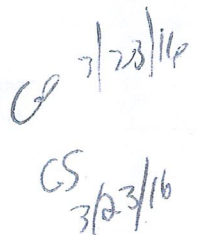
Agreed-Upon PRC Regulations Changes

<u>Section</u>	<u>Subsection</u>	<u>Current Page</u>	<u>Description</u>
I. General	B.15	3	<u>Report of Investigation</u> : Report issued within 80 calendar days of the filing date of the complaint.
I. General	B.18	3	1. <u>Supplemental Report of Investigation</u>: Report issued no later than 10 business days before a BOI hearing, as part of the BOI Hearing Packet.
II. Initiating the Process	A.2.b	3-4	b. For late filed complaints, the subject officer(s) are not required to appear before a Board of Inquiry, and the Board's findings will not be considered in any disciplinary actions by the City Manager or the Chief of Police.
			b. If a person is the subject of a criminal proceeding related to the subject matter of the complaint, the time for that person to file a complaint shall be tolled until the criminal matter has been adjudicated or dismissed.
II. Initiating the Process	A.4.a	4	Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory shall be referred by the PRC staff to the Commission for administrative closure at the next regularly scheduled meeting, provided there is sufficient time to give the complainant notice (see Sec. IV(A)(2)), and before the Notice of Allegations is issued. If a majority of the Commissioners agree, the case will be closed; if not, the Notice of Allegations will be issued within 10 calendar days after the date of the vote rejecting the PRC Officer's recommendation for closure, unless the complainant has elected mediation. <u>This Section II.A.4.a. does not apply to complaints initiated by the Commission under Section II.A. 3.</u>

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Berkeley Police Review Commission Regulations for Handling Complaints Against Members of the Police Department

<u>Section</u>	<u>Subsection</u>	<u>Current Page</u>	<u>Description</u>
II. Initiating the Process	B.1.c	5	If the subject officer agrees to mediation, she or he shall notify PRC staff within 10 calendar days of being informed of the complainant's election. A subject officer who agrees to mediation must agree to toll the City's 120-day disciplinary deadline should the mediation break down and the mediator determine that the officer is acting in bad faith. the officer later withdraw from mediation <u>before the start of the mediation session.</u>
III. Complaint Investigation	C.1	6	Nature of Investigation The investigation of a complaint shall consist of conducting recorded interviews with the complainant, the subject officer(s), and any witnesses to the incident that gave rise to the complaint; collecting relevant documentary evidence, including, but not limited to: police reports and records, photographs, and visual or audio records; and issuing a Notice of Allegations and Report of Investigation, and a Board of Inquiry Hearing (Hearing) Packet.
III. Complaint Investigation	C.2.a	6	Time for Investigation PRC staff shall make every effort to complete the Report of Investigation within 80 days of filing.
III. Complaint Investigation	D.2	7	Notice PRC staff shall notify subject and witness officers at least 5 business days <u>9 calendar days</u> before a scheduled interview date by providing a hard copy and, when feasible, an electronic mail notification. An officer who is unavailable for an interview shall contact the PRC Officer or the Investigator immediately to state the reason for his/her unavailability.



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Berkeley Police Review Commission Regulations for Handling Complaints Against Members of the Police Department

<u>Section</u>	<u>Subsection</u>	<u>Current Page</u>	<u>Description</u>
III. Complaint Investigation	F.2	8	<p>b2. The Report shall be provided to the subject officers, with a copy to the Chief of Police, within 75 calendar days of the date of filing of the complaint. If the Report is not timely, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay. Upon completion, the Report of Investigation shall be provided to subject officers, and any known representatives, with a copy to the Chief of Police and the Duty Command Officer.</p>
VII. Scheduling and Notice	A.1	12	<p>The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Hearings shall not be held on an officer's regular days off, scheduled vacation, or any authorized leave of absence, <u>except if subject officers in the same complaint do not share a common day on duty. In such cases, a hearing may be scheduled on an officer's regular day off, but not during a scheduled vacation or any authorized leave of absence.</u> PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.</p>
VII. Hearings	C.4.d	14	<p>A request for continuance made within 3 business days of the hearing date shall not be granted unless the requesting party is unable to attend due to a personal emergency, or can demonstrate substantial prejudice if a continuance is denied.</p>
VII. Hearings	E.1.g.	16	<p>a) If the BOI needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date, unless the parties agree to allow the Board to receive such material in writing without reconvening.</p>

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Berkeley Police Review Commission Regulations for Handling Complaints Against Members of the Police Department

<u>Section</u>	<u>Subsection</u>	<u>Current Page</u>	<u>Description</u>
VIII. Deliberation and Findings	B	16	<p><u>Majority Vote</u> All action by the Board under Section VIII of these regulations shall be by majority vote of those Commissioners present. Each dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.</p>
VIII. Deliberation and Findings	F.2	17	<p>After receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it at its next regularly scheduled meeting for which there is adequate time to meet Brown Act requirements. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 60 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period <u>and the requirement that the Commission's investigation be completed within one year,</u> provided the request is granted; tolling reverts back to the date the request is submitted and continues until the hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.</p>

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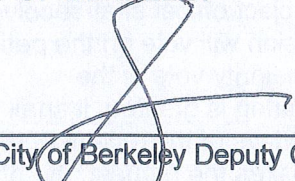
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**Berkeley Police Review Commission Regulations for Handling
Complaints Against Members of the Police Department**

<u>Section</u>	<u>Subsection</u>	<u>Current Page</u>	<u>Description</u>
VIII. Deliberation and Findings	F.3	17	If a petition for rehearing is granted, the Board of Inquiry shall be composed of the same Commissioners who presided over the original hearing unless circumstances make such composition impossible.

IN WITNESS WHEREOF, City and Berkeley Police Association have executed the above agreed-upon PRC Regulations changes and all revisions will be incorporated into the current PRC Regulations and effective as of the date signed below.

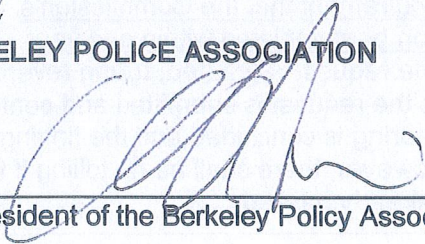
CITY OF BERKELEY

By: 

City of Berkeley Deputy City Manager

Date: 3/23/15

BERKELEY POLICE ASSOCIATION

By: 

President of the Berkeley Police Association

Date: 3/24/16

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BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER U-4

SUBJECT: UNUSUAL OCCURRENCES

PURPOSE

1. The purpose of this Order is to identify planning, operational and coordination responsibilities in the response to and the resolution of unusual occurrences. Unusual occurrences are generally defined as situations, generally of an emergency nature, that result from disasters and civil disturbances.
2. Specific instructions and checklists for handling unusual occurrences are contained in the Event Management Manual maintained in the Operations Watch Commanders office.

POLICY

3. It is the policy of the Berkeley Police Department to maintain the capability to plan for and respond to unusual occurrences so as to provide for the safety of the community.

PROCEDURES

4. Whenever possible, a plan will be developed and communicated to all responding personnel prior to any police response. In scheduled events, the mission statement will be in writing and briefed to all assigned personnel prior to deployment. In spontaneous events or incidents, the mission statement may be communicated verbally, but must still be an integral part of the planning process.
5. As soon as possible in spontaneous events or incidents, and in every instance in scheduled events, an operations plan shall be developed and followed. When events are scheduled in advance, a Special Order will be developed and distributed.
6. In every unusual occurrence, an Incident Commander will be appointed. In small scheduled events or spontaneous incidents, the Incident Commander may be a Sergeant. In larger operations, the Incident Commander may be a Lieutenant. In every instance, the Incident Commander will be identified and his/her identity broadcast to all assigned personnel. Every change of Incident Commander will be logged in all logs maintained by the command post and/or the Communications Center.
7. After-action reports will be the responsibility of the Incident Commander in command at the time the event is over, or as assigned by the Division Commander. A copy of the after-action report will be routed via the chain of command to the Chief of Police.
8. The Operations Division Captain is responsible for overall planning responses to unusual occurrences. The Captain may delegate this responsibility to a lieutenant.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER U-4

9. The Operations Division Captain is responsible for maintaining liaison with appropriate City, County, State, and Federal officials and agencies, to include attendance at meetings, training sessions and exercise as necessary. This function may be delegated to a lieutenant or sergeant.

STAGING SITE CONSIDERATIONS

10. Lengthy, large-scale events may require the establishment of additional staging sites, outside of the Public Safety Building and its secure parking lots.
11. Planners shall consider sites other than the 2100 block of McKinley Avenue when determining the most suitable location for staging resources and personnel through a lengthy event or series of events. When considering sites, planners shall consider the impact and effects of an anticipated prolonged presence on local residents, businesses, and institutions.
12. Planners shall consider the time and duration(s) of the scheduled events, and consider the availability and security of alternative sites including but not limited to City of Berkeley properties, parking lots, and city streets, Berkeley Unified School District sites, University of California sites, and other commercial sites and parking lots.
13. Planners shall consider likely negative impacts to any area selected as an alternative staging area, including the impacts to residents in or adjacent to the potential staging area. Planners shall consider mitigating impact through less-than full use of a street, e.g. using only one side of a street, and/or using the site for parking only, so that personnel activities and presence on site are minimized.
14. Planners shall establish a communication plan assigning specific personnel to provide information to residents of the affected area. For scheduled events, assigned personnel shall contact residents and provide information prior to the onset of the event. Information shall be provided to residents upon any posting of parking or site access restrictions, and where possible residents should be provided with information before restrictions are posted. Assigned personnel shall ensure information is also shared with the City Manager's Office. Information provided to residents and the City Manager's Office shall include, but not be limited to:
 - a) The reason for the need of a staging site;
 - b) Description of site selected
 - c) Discussion of alternative sites considered
 - d) The anticipated duration of the operation
 - e) The anticipated parking and street closure restrictions, including tow-away zones if needed.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER U-4

- f) A designated point-of-contact in BPD's Community Services Bureau, or other personnel as designated.
 - g) Establishment of a regular, daily, on-site meeting for residents and assigned staff.
 - h) Specific plans to provide access to residents, to be applied fairly and consistently to all residents.
 - i) An invitation to be added to an email contact list for updates
15. Planners shall establish a site-support plan, to include measures to mitigate negative impacts on residents, including traffic controls, placement of portable toilets, scheduling City clean-up crews, and inspecting the area post-event upon event conclusion and resource demobilization, and final debrief meeting for residents.
16. Planners shall establish a site-management plan assigning specific personnel to manage and staff the staging site during operational periods. A Sergeant or designee shall be responsible for supervising staff on scene, and providing liaison with non-agency personnel. Non-agency personnel shall be provided with information regarding the site, impacts to residents, and access to briefing sites, and restroom facilities.
- a. The BPD Site manager shall be responsible for:
 - i. Oversight of BPD personnel assigned to traffic control and security.
 - ii. On-site liaison with affected residents, including daily meetings as scheduled.
 - iii. Supporting visiting non-agency personnel while in the staging area.

