



POLICE REVIEW COMMISSION (PRC) MINUTES

**Meeting of Wednesday, July 26, 2006 – 7:00 P.M.
North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, California**

1. CALL TO ORDER BY ACTING CHAIRPERSON SHARON KIDD at 7:06 P.M.

2. ROLL CALL AND ATTENDANCE

Present: Acting Chairperson Sharon Anne Kidd
Acting Vice Chairperson Sherry Smith
Commissioner Danny Herrera (arrived at 7:13 p.m.)
Commissioner Jack Radisch
Commissioner David Ritchie
Commissioner Michael Sherman

Absent: Commissioner William White

PRC Staff: Victoria Urbi, PRC Officer
Dan Silva, Investigator

BPD Staff: Lieutenant Morizono
Sergeant Murray

BPA: Henry Wellington

3. ORDER OF THE AGENDA

No changes were made.

4. PUBLIC COMMENT

None.

POLICE REVIEW COMMISSION: 1947 Center St. Third Fl., Berkeley, CA 94704

TEL: 510.981.4950 TDD: 510.981.6903 FAX: 510.981.4955

e-mail: prc@ci.berkeley.ca.us http:// www.ci.berkeley.ca.us/prc/

5. **APPROVAL OF JULY 12, 2006 MINUTES**
M/S/C (Ritchie/Radisch) Unanimous to approve the minutes of the July 12, 2006 Regular Meeting with changes (see below). Ayes: Kidd, Radisch, Ritchie, Sherman, and Smith. Noes: None. Abstain: None. Absent: White.

Acting Vice Chairperson Smith recommended the following changes:
Page 2 - Staff reminded the Commission to not allow the Complainant's representative to (*deleted "not"*) speak on the merits of the case, since the case could still go to a board of inquiry.

Page 6 – (*The sentences in italics were added*) *The PRC Ordinance requires two Commission meetings a month.* The Commission believed the two meetings a month requires the entire Commission to be present. Boards of inquiries and subcommittee meetings do not require the attendance of the full Commission. *However, the PRC Officer may choose to cancel a full Commission meeting if there is insufficient agenda items.*

6. **OLD BUSINESS (For Discussion or Action)**

A. City Manager Memorandum requesting PRC to reconsider its July 12, 2006 decision regarding Case No. 2069, Haro Halton, proposal for Administrative Closure.

a. **Staff Report:** Staff referred to the City Manager's memorandum (See Communication, page 19) and cited several violations of the PRC Regulations. Staff provided the Commission with copies of an electronic mail message from Chris Morray-Jones, who was out of town, and read the letter to the Commission. Mr. Morray-Jones was opposed to the recommendation for administrative closure.

b. **Public Comment:** None.

c. **Discussion**

Commissioner Radisch: The complainant has done nothing wrong throughout this process. "This is an issue of fundamental fairness. The complainant has done everything to comply with the process. To deny him a hearing at this stage is unfair."

Commissioner Ritchie: The City Manager did not mention in his letter that the hearing was not finished and the case has already been half heard. "If there was any procedural problem, it was not caused by the complainant or the staff, but by the staffing situation, which is under the control of the City Manager." The City did not ensure proper staffing for PRC.

Commissioner Sherman: "This is a 'lose-lose' situation."

Acting Chairperson Kidd: She asked if it was normal procedure that staff went to the City Manger to discuss this case and maybe one of the Commissioners should have been at that meeting to elaborate on the Commission's position. She would like to meet with the City Manager to discuss this case.

Commissioner Sherman: Suggested that the Acting Chairperson go to the City Manager and lay out step by step how the Commission got to this point.

PRC Officer Urbi: She clarified that she went over all arguments and timelines with the City Manager. Since she reports to the City Manager, it is her job to report back on the communications of the Commission. She provided the arguments that it was unfair to the Complainant and that the hearing had already started.

Acting Vice Chairperson Smith: She expressed outrage because the City Manager did not staff the Commission and now he states that the Commission violated its own Regulations.

Mr. Wellington: It is problematic to debate this matter in a public forum. The merits of the case should not be discussed in public. He argued that officers have been prejudiced from this debate. "This recommendation is about the fundamental fairness to all parties and the documented violations of the PRC rules. The Commission has the ability to exercise discretion."

The first Board of Inquiry on this case exercised its discretion by considering the staffing shortage for one year and they determined that was not good cause to hear this case. When the case was closed and the complainant's representative petitioned for a rehearing, no new evidence was presented and there was no procedural violation presented. Thus, the Commission had no authority to overturn the case.

Commissioner Ritchie: "The problem here is regarding who is the boss of the Police Review Commission. The City stated several years ago that the PRC is under the direction of both the City Manager and the Commission. This changed over the years. Currently, it is the City Manager who is directing the PRC, so the Commission has not violated any rules."

The City Manager is the boss of both the BPD and PRC staff. He is saying staff did not meet certain timelines. The Commission has no control over staff. "The Commission is at the mercy of PRC staff. That is what it all boils down to."

Commissioner Sherman: "This is the first time that this has ever occurred in the history of this Commission." In this particular case, this situation was unique.

Mr. Wellington: "If you accept to abide by the Regulations, you have the authority to correct this problem. If you have the authority and ability to correct it, then you have the obligation to abide by the Regulations."

Commissioner Radisch: Called for question.

Acting Vice Chair Smith: Called Point of Order. "When a call for question has been made, all debate is required to stop. Commissioner Sherman should not have been allowed to continue. What happens is if someone wanted to continue the debate, then you take a vote on whether to stop the debate. So the 'Call for the Question' is shall we proceed to vote and if the majority says, 'Yes,' then the debate stops." This ensures that the debate does not go on forever.

- d. **Action: M/S/C (Sherman/Ritchie) Unanimous to continue hearing case #2069 even if officers do not appear at the hearing and the Commission urges the City Manager to reconsider his position because it was the responsibility of the City Manager, who caused the staffing problem. Ayes: Kidd, Herrera, Radisch, Ritchie, Sherman, Smith, and White. Noes: None. Abstain: None. Absent: None.**

B. Bay Area Police Oversight Network (BAPON) – Commissioner White

- a. Staff Report: Commissioner White is out ill. Staff recommended to table this item to the next meeting agenda.

7. **NEW BUSINESS**

Case Proposed for Summary Dismissal Pursuant to PRC Regulations Section III-13.

A. Case No. 2111, JoAnn Jean Liotta

- a. Staff Report: Ms. Liotta was stopped and her car was towed. She alleges improper search (officer heavy handed), discourtesy, abuse of discretion, because there was no offer to give her a ride home and racial bias.
- b. Public Comment: None.
- c. Discussion:
Commissioner Radisch questioned why the addresses on the complaint forms are being redacted.

Investigator Silva stated that several complainants have requested to have their addresses redacted and it became too cumbersome for staff to track these requests, so staff will redact address information.

Commissioner Ritchie stated that the BPD should establish a policy with guidelines regarding people who walk home after their car had been towed, so that the officer does not have to decide at the time whether to offer them a ride home or let them walk home.

Lt. Morizono stated that there is no policy that mandates that an officer should drive citizens home.

Sgt. Murray discussed the discretion and common sense of officers, such as when someone is disabled or unable to walk home. They try and protect citizens who are in danger, but this is a case-by-case basis.

- d. **Action: M/S/C (Ritchie/Herrera) Unanimous to approve the staff's recommendation for summary dismissal of case #2111. Ayes: Kidd, Herrera, Radisch, Ritchie, Sherman and Smith. Noes: None. Abstain: None. Absent: White.**

8. **PRC OFFICER'S REPORT (For Discussion or Action)**

- A. Citizen Police Awareness Academy
- Thursday, August 31, 2006, 6:00 P.M. – 9:00 P.M. at the Public Safety Building.
 - 14 weeks. Requires filling out application (see Communications). Space is limited.
- Staff encouraged all Commissioners to sign up for the academy. Chairperson Kidd and Commissioner Herrera have signed up to participate in the academy.
- B. Berkeley Police Association lawsuit update
- The BPA's attorney notified the PRC that they have withdrawn their motion for summary judgment. There is no pending motion and no new hearing date. BPA's attorney may re-file the motion in the future. The lawsuit is still pending.
- C. Commissioner Attendance
- a. Message from City Clerk regarding leave of absence, termination and reappointment: The next semi-annual reporting period is July 1- December 31. If Commissioners plan to take a leave of absence, they should notify their appointing councilmember to request the leave of absence in order to avoid the termination and reappointment process.
- b. Meeting Attendance Report: Commissioner Sherman had perfect attendance. Each Commissioner averaged missing two meetings during this reporting period.
- D. Complaints
- a. New Complaints filed = 0
Number of Open Cases = 26
- b. Upcoming Boards of Inquiry
August 3rd: Ashley Popa
October 4: Jacob Crawford
Staff will schedule more hearings in September.
- c. Findings Reports
Commissioner Herrera and Commissioner Sherman need to turn in their reports.
- E. Announcements
- a. The 23rd National Night Out is August 1 (See Communication)
The City Manager encourages the Commission to participate in this event and support the BPD's efforts in reaching out to the community and promoting public safety.
- b. Councilmember Maxwell Anderson recently appointed new Commissioner Kamau Edwards.
- c. No full Commission meetings in August
*Next meeting: September 13, 2006

9. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT (by a BPD representative)

Lt. Morizono reported that the City Council approved the New World Computer Dispatch System. If all goes well, the contract will be finalized in 3-4 months. The department hopes to be online with the new system in fall of 2007.

The P.O.S.T. Auditor is due for his final on-site visit on July 27. The Chief will obtain the findings report within two weeks, at which time he will provide the P.O.S.T. recommendations to the subcommittee.

BPD has hired a new crime analyst, starting on July 31, 2006. Berkeley Police Department is in the process of hiring five new police officers in August. The Chief intends to hire five additional officers. This will bring the department to full strength.

10. COMMITTEE REPORTS (For Discussion or Action)

A. Subcommittee: Draft Regulations for Investigations of First Amendment Activities.
Chief Hambleton gave an update at the last meeting. Please refer to minutes. Santa Cruz recently adopted a similar policy on First Amendment activities, which staff would forward to the Commission. Commissioner Ritchie stated that he would like to continue working on this subcommittee even after his resignation.

Commissioner Sherman passed out information on monitoring under the Patriot Act, which was related to his work with the Peace and Justice Commission.

B. Subcommittee: Review of BPD Case #06-3074.
Staff reported that the Berkeley Daily Planet wrote an article regarding the subcommittee's work. The next PRC meeting will be on July 31, at 5:00 p.m. The subcommittee is planning a workshop on October 7, 2006.

11. COMMUNICATIONS

See attached.

12. ADJOURNMENT

Staff reported that this was Commissioner Ritchie's last meeting after serving ten (10) years on the Commission. He has been instrumental in improving the practices and policies of BPD. He has provided institutional knowledge of PRC and assisted with the PRC Officer's transition. A small, informal celebration will be held in his honor in September. The Commission thanked Commissioner Ritchie for his years of service, commitment and dedication to this work.

Commissioner Ritchie stated that during his years on the Commission, it has been more important for him to get the issues out than follow the strict rules of procedure. He tried to approach issues in a serious manner, without getting to the point of animosity. He has seen several battles between parties at hearings. Officers and command staff has complimented him that they appreciated what he was doing, which showed him that his work was successful on the Commission.

The Board adjourned at 9:00 P.M.