



POLICE REVIEW COMMISSION REGULAR MEETING MINUTES

Wednesday, February 14, 2007
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. ROLL CALL BY CHAIRPERSON SHARON KIDD AT 7:05 P.M.

ROLL CALL AND ATTENDANCE

Present: Chairperson Sharon Ann Kidd Vice Chairperson Michael Sherman
Commissioner Kamau Edwards Commissioner Jonathan Huang
Commissioner Sherry Smith Commissioner William White

Absent: Commissioner Jack Radisch

PRC Staff: Victoria Urbi, PRC Officer
Fred Vides, PRC Investigator
Maritza Martinez, Administrative Support

BPD Staff: Lt. Greenwood

BPA: Henry Wellington

2. ORDER OF AGENDA

3. PUBLIC COMMENT:

Larry Smulian: Expressed disappointment with Judge Winifred Smith's decision. He has filed two complaints with the PRC. By filing with the Commission, he thought it would be a public record, which is an important process of this organization. He questioned how the process will be approached. Is there going to be a closed hearing? The court's decision weakened the PRC. He feels that "the bad and ugly" has to be addressed. He is not certain that the PRC is able to do that anymore.

Donna Pageau: The apartment complex close to the intersection of Adeline and Fairview Street is a problem area. Ms. Pageau lives there and there are many disabled people in that area. When



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people cross Adeline Street on Martin Luther King, right at Fairview, they are unable to do so, because it is very dangerous. There are crossing lights on Martin Luther King to cross over to the BART station. The police come once every three months and issue about sixty tickets in one day to people who run through the street. Ms. Pageau was actually hit by a car and she is unable to cross the street, because it is a very busy corner. The police needs to address this problem.

Commissioner Sherman: Offered to follow up on this matter and stated that the lights and crossing signs are issues covered by Public Works.

Keith Pageau: Mr. Pageau is a caregiver for a tenant at Adeline Street. He stated that it is very hard to walk across the street in this area. He contacted the police. After talking to the community officers, Mr. Pageau was referred to the traffic officer, who referred him to another traffic officer. Finally, somebody from BPD called him back and said that they were aware of the problem. Mr. Pageau was concerned that BPD only has three traffic officers in the division for a big city like Berkeley, which makes it very hard to resolve this problem.

Zachary Runningwolf Brown: Mr. Brown commented on Judge Smith's ruling against the PRC's effectiveness. He was at the City Council meeting the previous night and they encouraged an appeal of the court's decision. Mr. Brown pointed out that the BPD has had a very "ugly" record of drugs and evidence missing, which all took place in one year. BPD currently has an off-duty officer who fired his weapon while intoxicated. It is embarrassing that the BPA has filed a suit to disband the PRC. Mr. Brown has two complaints against the BPD for violating his civil rights.

Andrea Prichett: Ms. Prichett talked to lawyers about whether or not the PRC could hold closed hearings and some believe this would be a violation of the Brown Act. Ms. Prichett hopes that the PRC develops some plan to work with the community. She recently witnessed a hate crime involving a disabled person and she is frustrated because she does not know where to go to file a complaint. Ms. Prichett is excited that hopefully the Commission will vote that the Evidence Theft Subcommittee should conduct a full investigation. She welcomed the new Commissioner, Jonathan Huang, and invited him to join the subcommittee.

Melinda Zapata: The Berkeley Police should be serving the people of Berkeley. She feels the Judge's decision was inappropriate.

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

A. Lawsuit update: City Attorney Manuela Albuquerque made the following statement:

"Alameda County Superior Court Judge Winifred Smith has issued the decision that Police Review Commission procedures are subject to the confidentiality limitations of Penal Code § 832.7 and the Public Safety Officer's Procedural Bill of Rights. There are some final details in the case that will be briefed by the BPA and City next week, but these details will not affect these basic two points. In response to the decision the City Attorney issued the following public comment:

'The decision is very troubling because it holds that any public agency's evaluation of police officer conduct that "could lead to disciplinary action" must now be kept secret. (The judge recognizes that the City already keeps the Police Department's investigations of citizen complaints, police personnel records and discipline strictly confidential.) The decision therefore shields police conduct from public scrutiny even though police officers wield

awesome and intrusive powers and even though other public officials have no such protection. This is a sad day for public accountability.'

I will be meeting with the City Council and Police Review Commission on February 20 to consider the City's legal options, including appeal. The City Attorney will provide the Council and Commission with her confidential legal assessment, which will include the City's chances of success, the legal consequences of appealing and the timeline of such an appeal.. That closed session will occur on February 20 at 5:30 p.m. in the Civic Center Building in Berkeley, 2180 Milvia Street, 6th floor.

The closed session will be preceded by an open session, consisting of a public comment period. If there is a final decision made to appeal that decision, it will be reported out in open session after the closed session that evening. The City has 60 days from a final judgment to pursue an appeal. No final judgment has been rendered because of the final details that are being briefed at the moment. Thus, the City Council may not make any final decision next Tuesday concerning an appeal.

The PRC will be required to comply with the Judge's decision even if the City appeals. The range of options available to the Commission in complying with the Judge's ruling will be the subject of further public sessions of the Police Review Commission. It is also possible that the state laws at issue in the case might be amended."

Ms. Urbi said that in the interim, a decision has to be made on how to conduct PRC hearings. Cases have started to back up and she has done some research of other jurisdictions' closed hearing procedures, such as Oakland and San Francisco. The PRC has been around for over thirty years and this will represent a change in the PRC regulations, hearing procedures, investigation reports, etc.

San Francisco and Oakland stopped their public hearings beginning in September 2006. Since then, Oakland has held only one closed session hearing. San Francisco has not yet held any closed hearings.

Oakland allows public comment at the beginning. They require all parties to sign confidentiality statements. The complainant and the subject officer are present throughout the hearing. Once the hearing starts, the public is asked to leave. The witnesses for both parties are sequestered outside of the room and called in once they start to testify. The investigator issues the summary of all witness statements to their board at the hearing, and at this time the parties and board members cross-examine the witnesses and then each party makes a closing argument.

Oakland issues three different types of investigation reports: one for the complainant; one for the subject officer; and one for the board, internal affairs, and their City Administrator. The complainant receives a report that has the complainant's statements and non-confidential documents. Each officer gets a report with his or her statement only and other evidentiary documents. The findings are sent to the parties within seven days after the hearing. Each officer receives findings only on the allegations pertaining to him/her specifically.

Ms. Urbi asked the Commission for suggestions on how to conduct closed sessions.

Commissioner White suggested that they hold a separate meeting to review the information

provided. He said that the PRC is governed by the Ordinance and asked whether any changes in the Ordinance would have to be voted on.

Commissioner Smith requested an official ruling by the Oakland City Attorney about the rationale for closed hearings vis-à-vis the Brown Act. She asked if any local government people such as the League of Women Voters have questioned that. Anybody who monitors the Brown Act is automatically offended by the idea of people's business going on behind closed doors.

Commissioner Sherman alerted of the need to review the Brown Act.

Commissioner Smith stated that presumably we will talk about that at the close session meeting with Ms. Albuquerque, who is a great defender and an expert on the Brown Act.”

- B. Staffing update: Introduction of Fred Vides, PRC Investigator. He has seventeen years of experience with public agencies starting with the Oakland City Attorney's Office where he worked for seven years, and with San Francisco doing child support investigations for a period of ten years.
- C. Status of complaints: Currently, there are 39 complaints that are pending. In 2006, there were a total of 34 complaints. On average, the PRC receives 50 complaints annually. One of Ms. Urbi's plans this year is to do community outreach.
- D. Commission vacancies: To date, there are two vacancies. The PRC is awaiting appointments from the Mayor and Councilmember Maio. Introduction of Commissioner Jonathan Huang, who was appointed by Councilmember Kriss Worthington.

5. **BERKELEY POLICE DEPARTMENT CHIEF'S REPORT**

Report by Lt. Andrew Greenwood: Chief Hambleton is on vacation. There is no report to convey from the Chief. Captain Stephanie Fleming has retired. Lt. B. Agnew was promoted to Captain. Sgt. A. Hart was promoted to Lieutenant. Officer K. Smith was promoted to Sergeant. And Captain B. Miller is Acting Chief.

- A. Public Records Requests audit from Contra Costa Times, dated January 12, 2007

Ms. Urbi said, “This item was requested by Commissioner Radisch.” Attached to the PRC packet, there is a report from the Contra Costa Times. She talked to Chief Hambleton about this per Comm. Radish's request. “The public record's request didn't come through the normal channels. Normally, they would get a letter or email and would be reported to Captain Miller or Captain Pittman. Cap. Miller handles the police report and Cap. Pittman handles the records on administration. These were considered unusual requests.” The Record Clerks have been trained on how to proceed in the future. Ms. Urbi recommended using the information provided to ask questions at our next PRC meeting scheduled on Feb. 28.

- B. Semi-Annual Report of Marijuana Enforcement Activity (Attached).

6. **COMMITTEE REPORTS** (For Discussion or Action)

A. Subcommittee: Draft Regulation for Investigations of First Amendment Activities.

a. Commissioner update

Commissioner White has not received a copy of the draft, which has been completed and given to Chief Hambleton. Waiting to hear from him in order to bring it to the Commission for discussion.

b. Staff updates

Ms. Urbi reported that this subcommittee is comprised of Comm. White, Comm. Sherman, Comm. Radisch, and David Ritchie who is still on the subcommittee.

B. Subcommittee: Review of BPD's Evidence Theft Issues.

a. Commissioner Update

Commissioner White not present at the Jan. 30 meeting.

Commissioner Smith Andrea Prichett and Jim Chanin were added to the subcommittee, which is comprised of 3 commissioners and two community members. Next meeting is scheduled on Feb. 21.

Ms. Prichett stated, "We decided to expand and then create a full-blown investigation."

Chairperson Kidd stated that Ms. Urbi put together a draft, which they received that day recommending for the subcommittee to go forward with a full-blown investigation. Chairperson Kidd suggested having a meeting to go over this draft before it is presented to the full commission.

Ms. Prichett said she expects to have full participation from the community and recommended making a motion to vote to have an investigation.

Chairperson Kidd indicated that staff does not have to be in a subcommittee meeting. She voted to proceed with a full-blown investigation and have the subcommittee review this draft.

Commissioner Smith feels it is not necessary to have a motion and approval of the Commission again.

Commissioner White stated that his understanding is that the subcommittee was formed to review the evidence and when this process was completed, to present it to the full commission with the recommendation to go ahead with a full investigation. Comm. White suggested postponing this until the next subcommittee meeting.

Commissioner Smith disagreed and said that the subcommittee has clear authority from the Commission to proceed with a wider investigation. She suggested going ahead and proceeding.

b. Staff Update

PRC Officer Urbi stated that with regard to staff attending the subcommittee meetings, she has been directed by the City Manager to attend the Evidence Theft Subcommittee meetings in order to provide guidance on BPD policies, Commission rules and Regulations. Her only purpose is to guide the subcommittee along so that they stay on track on the focus of the policy issues. Also, the Commissioner's manual states that, "staff is not required to attend..." the subcommittee meetings, but the manual does not state that staff could not attend.

Ms. Urbi added that she provided a memorandum with a timeline on how the subcommittee first started and its progress to date. She stated, "Your initial charge was to look into the Kent case and only to review the police report. Around September/November 2006 there was another charge, which was to expand the review of the case to other evidence theft issues. In a January meeting, the subcommittee members voted to bring a recommendation to the full commission to open an investigation into the evidence theft issue."

A review and an investigation are two different things. According to the Regulations, an investigation can only be opened if a complainant files a complaint with the PRC or if the full commission votes by five affirmative votes. There would be policy recommendations. Staff would conduct interviews of witness officers and provide a report to the subcommittee.

Due to the recent court ruling, Ms. Urbi is waiting to receive direction from the City Attorney on how to proceed in relation to the subcommittee and public participation.

It has been moved by Commissioner Smith for the Commission to proceed with the full investigation and second by Commissioner Huang.

M/S/C (Smith/Huang) Unanimous that the Commission approve a full investigation of the evidence theft issues as a policy complaint. Ayes: Unanimous. Noes: None. Abstain: None. Absent: Radisch.

c. Discussion

Commissioner White: The Commission recommends that the PRC Officer conduct an investigation.

Commissioner Smith: Added, "Under the supervision of the subcommittee team."

Commissioner Kidd: Recalled they were waiting for Mr. Vides (PRC Investigator) to come on board to proceed with the investigation.

Commissioner White: Asked, "Is the Commission going to be part of the interview process?"

Urbi: Replied that the process would be similar to when a complaint is filed. Staff investigates the case, then the subcommittee or the board of inquiry receives the investigation report. The subcommittee will review the report and make additional findings.

Mr. Wellington: Asked if these were going to be close or open meetings to the public?

Commissioner Kidd: Said, “The subcommittee meetings are open to the public.”

Commissioner White: Reiterated that Ms. Urbi is waiting for some direction from the City Attorney’s office on how to proceed at the subcommittee meetings.

Mr. Wellington: Mentioned that if the PRC is allowing members from the public to be part of the subcommittee, he assumes we are saying these meetings are open to the public. If not, we shouldn’t have any member from the public on it.

7. **NEW BUSINESS**

A. Statements of Economic Interests for 2006, Form 700 – Due April 2, 2007

B. City Commission input: Lawrence Berkeley National Laboratory and the Draft Environmental Impact Report.

8. **OLD BUSINESS**

A. Budget update

Ms. Urbi: Said there is no update at this time. Meeting was postponed.

9. **APPROVAL OF MINUTES: January 24, 2007 Meeting**

M/S/C (White/Sherman) Ayes: Unanimous. Noes: None. Abstain None. Absent: Radisch.

10. **COMMUNICATIONS**

11. **ADJOURNMENT**

Meeting was adjourned at 8:20 P.M.