



POLICE REVIEW COMMISSION REGULAR MEETING MINUTES

Wednesday, May 9, 2007
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

**1. CALL TO ORDER BY CHAIRPERSON SHARON KIDD AT 7:05 P.M.
ROLL CALL AND ATTENDANCE**

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

Absent: Commissioner Jack Radisch

PRC Staff: Victoria Urbi, PRC Officer
Maritza Martinez, Administrative Support

BPD Staff: Sgt. Reece and Lt. Hart

BPA Staff: Henry Wellington

2. ORDER OF AGENDA

Moved Item #3 (Public Comment) to Item #9.

3. REVISED REGULATIONS AND CLOSED HEARING PROCEDURES

A. Staff report

Comm. White: In September 2005, the Commission adopted a revised version of the regulations. The changes from 2005 are not reflected in the newly revised regulations. He recommended that the September 2005 regulations be reviewed and attached to the most recent regulations, so that the Commission could review it.



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Motion to review the September 2005 revised regulations and to attach it to the most recent regulations. M/S/C (White/Edwards) Motion passed unanimously. Ayes: Kidd, Sherman, Edwards, Huang, Smith and White. Noes: None. Abstain: None. Absent: Radisch.

B. Discussion

Ms. Urbi: The City Attorney provided the draft of the revised regulations, which were distributed to the Commission. She suggested that the Commission hold off on discussing the regulations until they review the newly revised regulations and the regulations from 2005. The Commission could then adopt the revised regulations at the next Commission meeting on May 23rd.

Mr. Wellington said that the PRC has the burden to comply with the court order and claimed that this was the first time he saw the draft of the regulations.

Ms. Urbi stated that a draft of the revised regulations was distributed at the April 11th meeting, which Mr. Wellington attended. At that meeting, the Commission voted to hold a public hearing on the regulations, which was scheduled on April 25th, which Mr. Wellington also attended. Additionally, he had a copy of the board's hearing procedures since February 28. Ms. Urbi recalled that Ms. Albuquerque invited him to comment on those procedures at the February 28th meeting.

Furthermore, Ms. Urbi stated that since February, the City Attorney's office has made several attempts with the Berkeley Police Association's counsel to comment on the procedures.

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

A. Lawsuit Update

Ms. Urbi: On April 16, 2007, City Attorney Manuela Albuquerque argued the fourth cause of action and the judge took this under submission. The judge has not ruled on this action yet. Ms. Albuquerque planned to provide the Commission with an update on the lawsuit at the Closed Session Meeting with City Council on May 14th.

B. Status of complaints: There are currently 53 open complaints. On March 16, PRC staff sent letters to all the complainants to provide a status of their cases and update them on the pending litigation. Ms. Urbi stated that some of the complainants are losing interest in their case, because some who filed a year ago stated that the PRC has not done anything on their case in terms of a resolution. She urged the Commission to adopt the revised regulations after they have had the opportunity to review them, so that staff could start scheduling hearings.

Comm. Sherman asked if there was coordination with BPA on the regulations.

Ms. Urbi stated that she spoke with Mr. Wellington in early March. He stated that he was opposed to the entire proposal of the hearing procedures. If he provided certain specific sections that he did not agree with, then they could work on some of the provisions. However, he stated the entire hearing procedures were not agreeable. She stated that the only comment from the BPA that staff has received was the letter concerning officer

interviews of the Evidence Theft policy complaint.

Comm. Sherman asked, “If the Commission adopted these revised regulations, would the BPA object to what is currently on the table?”

Ms. Urbi believed that the BPA would probably object to the current revised regulations, and based on what Mr. Wellington told her that he disagreed with the entire proposed hearing procedures, that BPA would likely continue to object to the regulations. Their strategy is to stall our process, and they have been successful.

Mr. Wellington stated that he believed the PRC Officer mischaracterized his position. He believes PRC has the burden to comply with the court order. He stated that Ms. Urbi has asked to provide input, but this was the first time he has seen this draft. He stated he had not seen any drafts of the procedures or revised regulations.

Comm. Huang stated that he was not certain what type of “double thing you’re trying to pull,” because he has been given the draft many times.

Mr. Wellington asked if he was out of order and “are you referring to me in that way?” in terms of pulling a double thing.

Comm. Huang stated he believes Mr. Wellington is pulling a double thing on the Commission, because he clearly remembered Mr. Wellington was given these procedures. He recalled at the last meeting that Mr. Wellington again said that was the first time he was given the draft. He stated that Ms. Albuquerque even asked him for his comments at one of the meetings, and he understands that the City Attorney has been making efforts to get the BPA’s input.

Comm. Sherman asked if Mr. Wellington would work with his attorney and the City Attorney to provide his input or if he had any comment.

Comm. Edwards informed Mr. Wellington that he could respond to Comm. Sherman’s question.

Mr. Wellington stated he did not want to respond, but that he had a problem with the time lines.

Chairperson Kidd pointed out that in Ms. Albuquerque’s 5-9-07 memorandum to the Commission, it states, “The Berkeley Police Association has not submitted any proposed revisions to PRC regulations or proposed revisions despite being repeatedly invited to do so ever since the February court decision and despite being apprised of the various revisions pending before the PRC.” She stated BPA failed to provide input. She asked what does Ms. Albuquerque mean, when she wrote, “I recommend the Commission continue acting upon them...?”

Comm. White clarified that we continue looking at the 2005 regulations and the newly revised one.

Comm. Smith stated that the City Attorney means, “We continue the discussion over until the May 14th meeting.”

Chairperson Kidd asked Mr. Wellington if there was anything else he would like to add.

Mr. Wellington stated that he just wanted to clarify their position, so that there is no misunderstanding about their intent.

Comm. Smith stated that remark has confused her even more now, because Mr. Wellington said he was trying to clarify. Through the response of PRC Officer Urbi, he had ample opportunities to be able to respond since February. She stated, “If you’re saying, ‘Oh my goodness, its dated May 9th and we haven’t had a chance to respond,’ that seems not to be the case. So your clarification has simply further ‘muddied’ the waters.”

Mr. Wellington stated that there was a letter with their objections that his attorney sent to the City Attorney’s office and it should have been copied to Ms. Urbi’s office. It is their response to the proposed regulation changes. Mr. Wellington said that Ms. Urbi mischaracterized him when she said that he had not provided a response.

Ms. Urbi stated she never received the letter from the BPA’s attorney on their response. She only learned about the letter from Mr. Wellington, at which time she requested a copy from the City Attorney’s office. Mr. Wellington could have given her a copy, he could have told her what their response is or he could have done a number of things in the spirit of cooperation. But he has not.

- C. Commission vacancies: There are two vacancies. Mayor Bates and Councilmember Maio each have vacancies on this Commission.
- D. Comments: None

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

No report.

6. **APPROVAL OF MINUTES**

- A. Regular Meeting: April 11, 2007
Motion to approve minutes. M/S/C (Sherman/Huang) Motion passed unanimously. Ayes: Kidd, Sherman, Edwards, Huang, and Smith. Noes: None. Abstain: White. Absent: Radisch.
- B. Closed Session Meeting: April 25, 2007
Motion to approve minutes. M/S/C (Sherman/White) Motion passed unanimously. Ayes: Kidd, Sherman, Huang, Smith and White. Noes: None. Abstain: Edwards. Absent: Radisch.
- C. Regular Meeting: April 25, 2007
Motion to approve minutes. M/S/C (White/Sherman) Motion passed unanimously. Ayes: Kidd, Sherman, Huang, Smith and White. Noes: None. Abstain: Edwards. Absent: Radisch.

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

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

a. Commission update

Comm. Sherman: At their last meeting, numerous items were discussed. The Peace and Justice Commission covers items related to this subcommittee.

Ms. Urbi: The next meeting is on June 27, 2007. She encouraged the new Commissioners to join one of the three subcommittees.

b. Discussion: None.

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

a. Commission update

Comm. White: Said in regards to their last meeting on May 3, there was a letter instructing the members to not ask certain questions about this case.

Also, there was an issue about approving the minutes because names of officers had been removed in accordance with the court decision on officer confidentiality. Therefore, the subcommittee members refused to approve the minutes based on the rationale that public meetings and/or names have been made public already.

They are scheduled to meet with the City Attorney and City Manager on May 14 in order to get clarification on how to proceed on these items.

b. Discussion

Ms. Urbi: Stated that the Commission received a letter from the Berkeley Police Association's attorney, who objected to interviewing officers on a policy complaint. Consequently, the City Attorney advised PRC staff to not interview individual officers, because we would violate the confidentiality of the officers and this affects the current litigation. The City Attorney will discuss this issue further at the close session meeting on May 14.

Comm. Smith: Recalls having a discussion to expand the subcommittee and bring community members into it. It was determined that only two community members could be added. The problem is that the City Attorney says that only Commission members could attend the closed session meeting.

Comm. Smith stated that the PRC is dealing with Brown Act exclusions of open meetings on lawsuits and on personnel matters. Under the Brown Act, the public can only be excluded if the meeting is regarding personnel matters or advice on litigation, such as lawsuit strategy. She believed that the discussion the subcommittee wanted to have with the City Attorney was concerning interviewing officers on a policy complaint, which is not covered by the Copley decision. She believed it was not legal to close this meeting.

Several of the commissioners stated that the entire Evidence Theft Subcommittee, including Mr. Chanin and Ms. Prichett, should participate in the closed session meeting,

since the subcommittee initially requested clarification from the City Manager and City Attorney on the officer interviews.

Ms. Urbi: The City Attorney would discuss this matter on May 14 because it is related to the lawsuit. She suggested that the Commission set up another meeting regarding the participation of non-community members in closed sessions.

Comm. White: Opposed to this idea.

Motion that PRC agrees to attend the Joint Closed Session Meeting on May 14 to discuss the lawsuit with the City Council and City Attorney, but if there is a discussion regarding the Evidence Theft Subcommittee's police officer interviews pertaining to the policy complaint, that the PRC will refuse to be in Closed Session because of the City's exclusion of the community members. Further, the Commission prefers a severed discussion that includes the community members from the Evidence Theft Subcommittee.

M/S/C (White/Smith) Motion passed unanimously. Ayes: Kidd, Sherman, Edwards, Huang, Smith and White. Noes: None. Abstain: None. Absent: Radisch.

- C. Subcommittee: Review of BPD's Vehicle Pursuit Policy
 - a. Commission update: A meeting has been scheduled on May 15, 2007.
 - b. Discussion: None.

8. PUBLIC COMMENT:

None.

9. COMMUNICATIONS

Comm. Smith asked if anybody could figure out the anonymous citizen's letter, which was attached to the Communications. Comm. Sherman related it to some drug activity going on in the West Berkeley area. Comm. White asked to refer it to BPD. Sgt. Reece said he would look into it.

10. ADJOURNMENT

Meeting was adjourned at 8:35 p.m.