

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**March 11, 2015
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**
Special and Regular Meetings of February 25, 2015.
- 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 review regarding McKinley Avenue staging in December 2014: Presentation of report by BPD.
 - b. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015: PRC Officer's report on BPD information received; status of subpoena drafting; further discussion and action.

- c. Continue review of mutual aid practices and policies: further discussion and action.
- d. Use of police in-vehicle cameras and body-worn cameras by BPD: review General Orders of other agencies.
- e. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.
- f. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.
- g. Urge Council Members and the Mayor to hold annual commissioners' meetings with their appointees.
From: Commission on Aging

9. NEW BUSINESS (discussion and action)

- a. Release of information from BPD to PRC.
From: Commissioner Bernstein
- b. Standing Rules for PRC: review and comment on first draft.
From: Commissioner Bernstein
- c. Marijuana enforcement report: review report for July – December 2014 and discuss additional information possibly needed.
From: Commissioner Bernstein
- d. Status of implementation of amendments to Regulations for Handling Complaints Against Members of the Police Department.
- e. Berkeley Police Association report on community outreach.

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (DISCUSSION AND ACTION)

- a. Regulations Subcommittee
Update/schedule meeting date.
- b. Suspicious Activity Reports Subcommittee
Report on March 4, 2015 meeting. Next meeting March 19, 2015, at 6:30 p.m.
- c. Transgender General Order Subcommittee
Update/schedule meeting date.

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.)

Closed Session

13. REVIEW OF CALOCA DECISION

Complaint #2327.

End of Closed Session

14. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.



Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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 MEETING

March 11, 2015

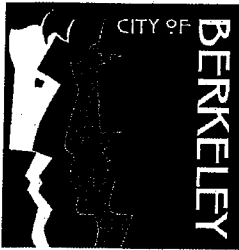
MINUTES

February 25, 2015 Special Meeting	Page 7
February 25, 2015 Regular Meeting	Page 8

COMMUNICATIONS

Communication #4418 – Memo from BPD Public Safety Business Manager to PRC Officer and Chief of Police: Documents relevant to protests on December 6 – 8, 2014.	Page 13
Communication #4424 – BART Police Department Policy 451: Use of the AXON Flex.	Page 15
Communication #4424 – Oakland Police Departmental General Order: Portable Video Management System/	Page 21
Communication #1202 – Memo from City Attorney dated February 18, 2015: Request for Opinion Regarding Possible Disclosure of Board of Inquiry Findings Report to Complainants.	Page 31
Communication #4377 – Memo from City Attorney dated February 18, 2015: Request for Opinion Regarding Disclosure of Berkeley Police Department Internal Affairs' records to the PRC.	Page 33
Communication #4311 – Commission on Aging request to urge Councilmembers and the Mayor to hold annual commissioners' meetings with their appointees.	Page 37
Communication #4160 – PRC draft Standing Rules	Page 43
Communication #1741 – Semi-Annual Report of Marijuana Enforcement Activity dated January 14, 2015 and B.M.C. Chapter 12.24, Marijuana Policy.	Page 47
Communication #4370 –Police Review Commission Subcommittee List.	Page 53
Communication #4160 – February 26, 2015 e-mail from PRC Officer re: BPD reporting of data collection under G.O. B-4.	Page 55
Communication #4392 – February 25, 2015 e-mail with photograph attached from member of public re: Police misconduct.	Page 56

mkm



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
SPECIAL MEETING
MINUTES
(unapproved)**

**February 25, 2015
6:00 P.M.**

Booth Auditorium, Boalt Hall
(Bancroft Way at Piedmont Ave.)
University of California, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 6:07 P.M.

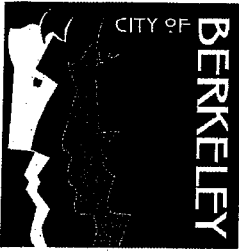
- Present: Vice Chair George Perezvelez (arrived 6:50 p.m.)
Commissioner George Lippman
Commissioner Karen Kiyo Lowhurst
Commissioner Ann Rogers
Commissioner Michael Sherman
Commissioner Bulmaro Vicente
Commissioner Lowell Finley (*temporary assignment*)
Commissioner Harvey Kletz (*temporary assignment*)
- Absent: Commissioners Barbara Allen, Benjamin Bartlett
- PRC Staff: Katherine J. Lee, PRC Officer
- BPD Staff: Capt. Cynthia Harris, Sgt. Joseph Okies, Sgt. Benjamin Cardozo, Ofc. David Bartalini

2. WORKSESSION

- A. Community and Police Relations
- 1) Public Comment
There were 14 speakers
 - 2) Police Review Commission Discussion

3. ADJOURNMENT

By consensus, the meeting was adjourned at 7:35 p.m.



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(Unapproved)**

**February 25, 2015
7:00 P.M.**

Booth Auditorium, Boalt Hall
(Bancroft Way at Piedmont Ave.)
University of California, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:36 P.M.

Present: Vice Chair George Perezvelez
Commissioner George Lippman
Commissioner Karen Kiyo Lowhurst (left 9:45 p.m.)
Commissioner Ann Rogers
Commissioner Michael Sherman
Commissioner Bulmaro Vicente
Commissioner Lowell Finley (*temporary assignment*)
Commissioner Harvey Kletz (*temporary assignment*) (left 8:35 p.m.)

Absent: Commissioners Barbara Allen, Benjamin Bartlett

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Cynthia Harris, Sgt. Joseph Okies, Sgt. Benjamin Cardozo, Ofc. David Bartalini

2. APPROVAL OF AGENDA

(Occurred after public comment.) By consensus, the agenda agreed to the Chair's proposal to incorporate item 9.c. into its discussion of item 8.c.

3. PUBLIC COMMENT

There was one speaker.

4. APPROVAL OF MINUTES

Regular Meeting of February 4, 2015.

By consensus, the minutes were approved as written.

5. CHAIR'S REPORT

The Chair noted that the latest marijuana enforcement report from the BPD is in the agenda packet for this meeting, and that discussion of the report will be agendized for the next meeting.

6. CHIEF OF POLICE'S REPORT

No report this meeting.

7. PRC OFFICER'S REPORT

A report of active cases and their status was distributed. Commissioners were reminded to return signed confidentiality agreements. Commissioners Rogers, Perezvelez, Finley and Bernstein will attend the NACOLE Regional Forum on March 4. Clarification from the City Attorney's Office regarding public documents was relayed: if BPD releases a report to the public, its inclusion in a BOI packet does NOT have the effect of making the report confidential.

8. OLD BUSINESS (DISCUSSION AND ACTION)

- a. Continue development of General Order regarding the treatment of transgendered persons.

Russell Bloom, Investigator from BART Independent Police Auditor's Office, made a presentation regarding BART's process in creating its general order on transgendered persons.

Motion to create a subcommittee to develop a General Order regarding the treatment of transgendered persons.

Moved/Seconded (Perezvelez/Lowhurst) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Kletz

Chair Bernstein appointed herself and Commissioners Perezvelez and Rogers to the Transgender General Order Subcommittee.

- b. Establish rules of procedure for handling policy complaints and policy reviews.

Motion to adopt the proposed rules as written.

Moved/Seconded (Sherman/Vicente) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Kletz

- c. Policy review regarding the events of December 6, 7, and 8, 2014, specifically focusing on the use-of-force General Order, the crowd control General Order, the use of tear gas, the limitation on movement of emergency vehicles, the allegations of non-engagement by BPD during the disturbances on December 7; the use of batons in crowd control; and the firing of projectiles into a crowd: review BPD documents obtained to date; further discussion and action, taking into account Council's referral to the PRC as noted in item 8.c. of this agenda.

Motion to direct the PRC Officer to start the process of drafting subpoenas to conduct the police investigations with assistance from Commissioners Finley, Lowhurst, and Lippman.

Moved/Seconded (Perezvelez/Rogers) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente

Noes: None

Abstain: None

Absent: Allen, Bartlett, Kletz

- d. Mutual aid practices and policies: update from PRC Officer regarding applicable mutual aid orders, policies and other writings, including those from the Alameda County Sheriff's Office; further discussion and action.

The PRC Officer distributed information about mutual aid procedures from the State. After discussion, the Commission **agreed by consensus to continue the discussion to the next meeting.**

9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Use of police in-vehicle cameras and body-worn cameras by BPD: determine how to proceed on referrals from City Council on February 10 and possibly February 24.

By consensus, the Commission agreed that the matters should be reviewed by the full Commission for the time being, and directed the PRC Officer to gather and distribute General Orders for in-vehicle and body cameras from Oakland, Los Angeles, BART, and other agencies in her discretion, for further discussion at the next meeting.

- b. Changes to General Orders C-64 (Crowd Control), M-2 (Mutual Aid), and U-2 (Use of Force): determine on how to proceed on City Council's February 10 referral to review Oakland and San Francisco PD orders on crowd control and use of force, and any other policies deemed appropriate, to make appropriate recommendations to revise the BPD's general orders.

Motion to take up these issues after investigation of the events of December 2014 is completed.

Moved/Seconded (Rogers/Vicente) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Perezvelez, Rogers, Sherman, and Vicente

Noes: None

Abstain: None

Absent: Allen, Bartlett, Kletz, Lowhurst

- c. Investigation into police response to protests on December 6, 2014: determine how to proceed on City Council's February 10 referral to investigate: the appropriateness of using tear gas, other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control, the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents; have recommendations to the City Manager, Chief of Police and City Council no later than six months.

(Discussed in conjunction with item 8.c. above.)

d. Fair & Impartial Policing policy (General Order B-4): ask BPD about the status of implementation and plans for public reporting of demographic data.

By consensus, the Commission asked the PRC Officer to send a letter to the Chief asking him to report at the next meeting how reporting of the data will occur.

e. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.

By consensus, this item was tabled to the next meeting.

f. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.

By consensus, this item was tabled to the next meeting.

g. Urge Council Members and the Mayor to hold annual commissioners' meetings with their appointees.

From: Commission on Aging

By consensus, this item was tabled to the next meeting.

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (DISCUSSION/ACTION)

a. Regulations Subcommittee
No report.

b. Suspicious Activity Reports Subcommittee
The subcommittee will meet soon.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

12. PUBLIC COMMENT

There was one speaker. (This item was moved to occur after item 8.c.)

Closed Session

13. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2367.

Motion to approve administrative closure of complaint #2367, and to inform the complainant this is because she stated insufficient facts to enable the complaint to proceed.

Moved/Seconded (Rogers/Finley) **Motion carried**

Ayes: Bernstein, Finley, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: Lippman Absent: Allen, Bartlett, Kletz, Lowhurst

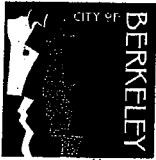
End of Closed Session

14. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

The vote to approve the recommendation for administrative closure of Complaint #2367 was announced.

15. ADJOURNMENT

By consensus, the meeting was adjourned at 10:20 p.m.



BERKELEY POLICE DEPARTMENT MEMORANDUM



COMMUNICATION No. 4418

To Katherine J. Lee, PRC Officer Date March 3, 2015
Michael Meehan, Chief of Police

From Lynne E. Olesen, Public Safety Business Manager *LO*

Subject Documents relevant to protests on December 6 – 8, 2014

In response to your February 11th request for documents, audio recordings, video recordings and other documentation made on December 6, 7 and 8 2014 concerning the demonstrations on those dates, staff has provided or will make available information as outlined below:

1. Recordings of communications on all channels, including dispatch and operational channels;
 - a. The operations plan did not include requesting recording of the channel that was used for crowd control during the events of December 6, 7 and 8, therefore, audio files do not exist.
 - b. Hard copies of the Computer Assisted Dispatch (CAD) are available and on the diskette provided to you.
2. Operational orders and operational plans;
 - a. Copies are on the diskette provided to you.
 - b. You may arrange to come to the department to review the unredacted copies of those documents.
3. Operational briefing documents;
 - a. No separate documents exist except for what is included in the operational plans.
 - b. Copies of the operational plans are on the diskette provided to you.
 - c. You may arrange to come to the department to review the unredacted copies of those documents.
4. Requests for mutual aid;
 - a. All requests for mutual aid were made by telephone and no recordings were made of telephone calls.
5. Mutual Aid Plan;
 - a. No documents were created separately from the operational plan for Mutual Aid.



BERKELEY POLICE DEPARTMENT MEMORANDUM



- b. The Mutual Aid binder that you have in your possession has the most current mutual aid agreements outlining the terms of providing aid.
6. Crowd control plan;
 - a. No documents were created separately from the operational plan for crowd control.
 - b. Crowd Control policy and guidelines are outlined in General Order C-64 which is accessible on-line:
http://www.ci.berkeley.ca.us/uploadedFiles/Police/Level_3_-_General/GO%20C-64_09Jun11.pdf
7. Requests to the Crime Scene Investigation Unit sergeant or designee to videotape the demonstrations;
 - a. All requests to the Crime Scene Investigation Unit were made by radio transmissions on channels that were not recorded.
8. Video recordings of the demonstrations;
 - a. We have arranged to have all video recordings that are in our possession available for the PRC Officer and Investigator to review.
 - b. Please let us know when you would like to begin the viewing as the material is voluminous and we anticipate that it will require viewing for many hours over several days. Staff will be flexible in our time to accommodate times that are convenient to you.
9. Any other relevant documents, audio recordings or video recordings.
 - a. We have included a document that list injuries received by Police Department employees during the demonstrations. This is in the "Miscellaneous" folder on the diskette provided to you.
 - b. We have one document in "Miscellaneous" that is entitled "SIT STAT"
 - c. We have included a folder entitled "Reports" for the ten reports created for the events of December 6th through 8th. This is also on the diskette provided to you. You may arrange to review the unredacted reports at the department.

I am available by phone or email for any clarification or questions you may have regarding this material. I ask that you contact Latargie Norman directly at 981-5751 to arrange viewing the videos or any other material referred to above.

Use of the AXON Flex

451.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BART) is providing each of its sworn sergeants and officers with a wearable AXON Flex video recorder for use while on-duty. The AXON Flex is designed to record both video and audio activity of members during the course of their official police duties. The AXON Flex is intended to assist officers in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident.

The use of the AXON Flex provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Such evidence shall be maintained by the Police Department as an investigatory record if it supports a criminal investigation based on reason to believe the subject of the investigation is or may be involved in criminal conduct, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department.

Officers shall utilize the AXON Flex in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

451.2 DEFINITIONS

- (a) "AXON Flex" This refers to the camera system that captures audio and video signals that is individually worn by officers and that includes at a minimum a recorder, microphone, and paired monitoring device.
- (b) "Audio Recording" is the electronic recording of sound. "Evidence.com" is the online web-based digital media storage facility. The virtual warehouse stores digitally-encrypted data (photographs, audio and video recordings) in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintain an audit trail of user activity.
- (c) "Evidence Transfer Manager" (ETM) is a docking station that simultaneously recharges the AXON Flex Camera and AXON Flex Controller and uploads all data captured from the camera's point of view during officer's shift to bartpd.evidence.com. The ETM ensures that evidence handling is secured and cannot be altered.
- (d) "AXON Flex Camera connects to the AXON Flex Controller. The Flex Camera manages the video compression and storage and is capable of playback via a Bluetooth paired smart device. The AXON Flex Camera ensures that evidence handling is secured and cannot be altered. Once plugged into the docking station, the AXON Flex Camera will upload digitally-encrypted data through the Evidence Transfer Manager to bartpd.evidence.com.
- (e) "AXON Controller" is the battery pack and on off switch for the AXON Flex Camera and connects to the Flex Camera via a small gage wire.

Use of the AXON Flex

- (f) "AXON Flex Technician" An employee of the department assigned by the system administrator that will assign, oversees, and tracks Department equipment. The AXON Flex Technician shall oversee needed repairs or replacement of the AXON Flex and Evidence Transfer Manager equipment through Taser AXON representatives.
- (g) "System Administrator" The Administrative Services Supervisor will be the bartpd.evidence.com system administrator with full access to user rights who controls passwords, coordinates with the AXON Flex Technician, and acts as liaison with Taser AXON representatives.
- (h) "Video Recording" is the electronic recording of visual images with or without audio component.
- (i) "Impound" is the process by which video and audio files are uploaded to Evidence.com by docking the AXON Flex to the Evidence Transfer Manager thereby ensuring files are secure and unable to be altered.

451.2.1 CATEGORIES AND RETENTION PERIODS

The BART Police Department has twelve (12) categories to tag and retain our cases in Evidence.Com. Each one is listed below with the current retention cycle. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs, Evidence Specialist, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

- (a) 01) INFRACTION VIOLATIONS 2 YEARS
- (b) 02) DETENTIONS 2 YEAR
- (c) 03) SERVICE TO CITIZENS 1 YEAR
- (d) 04) COLD REPORT 1 YEAR
- (e) 05) ARREST (UNTIL MANUALLY DELETED)
- (f) 06) OUTSIDE ASSIST 1 YEAR
- (g) 07) CONSENSUAL CONTACTS 1 YEAR
- (h) 08) SICK OR INJURED PATRONS 3 YEARS
- (i) 09) STATEMENTS (UNTIL MANUALLY DELETED)
- (j) 10) USE OF FORCE (UNTIL MANUALLY DELETED)
- (k) 11) UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED)
- (l) 12) TESTING / ACCIDENTAL 30 DAYS

451.3 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed patrol officer equipped with a Department issued AXON Flex will be responsible for making sure that the AXON Flex is in good working order. The AXON

Use of the AXON Flex

the loss. A spare AXON Flex shall be issued to the officer through a supervisor prior to going back into service. The officer and supervisor shall inform the AXON Flex Technician via email of what spare was issued (number of AXON Flex unit). The AXON Flex Technician shall assign a new unit to the officer as soon as possible after receiving notification of the loss or theft of the camera.

- (b) Once the AXON Flex is activated pursuant to Section 451.5 of this policy, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the AXON Flex from the recording mode. If the event giving rise to the activation resumes following the officer's termination of the AXON Flex recording the officer shall reactivate their AXON Flex.
- (c) When the AXON Flex is used in any incident, investigation, or during a traffic stop, this fact will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, when the AXON Flex is not used in any incident, investigation, or during a traffic stop, the reason for non-use will be documented on any relevant citation and/or report prepared regarding the incident. Whenever the AXON Flex is activated pursuant to Section 451.5 of this policy, this fact will be documented on any relevant citation and/or police report prepared regarding the event that gave rise to the activation. Conversely, whenever the AXON Flex is not activated as required by Section 451.5 of this policy, the reason for the lack of activation will be documented on the relevant citation and/or police report prepared regarding the event that otherwise would have given rise to activation. For the purposes of capturing the recording or lack of recording in the police report it should be mentioned at the beginning of the narrative summary.
- (d) Except in circumstances prohibited by statute, or as directed by the Chief of Police, or his or her designee, an officer may have access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure accuracy and consistency of accounts.
- (e) Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.
- (f) If the AXON Flex is accidentally activated, the officer shall inform his or her immediate supervisor requesting the recording be deleted. The request shall be sent via email and routed to the AXON Flex Administrator. Once the video has been reviewed by the supervisor and administrator and deemed to have no evidentiary value the video will be categorized as "Testing/ Accidental" and retained for thirty (30) days prior to deletion. Officers should note accidental recordings by labeling them using the Samsung Player prior to download.
- (g) Once an officer has completed a recordable encounter he or she shall label the recording using the Samsung Player. The officers shall provide the event number, category, and title

Use of the AXON Flex

of the video. This information will be uploaded along with the video once docked into the ETM at the end of shift.

- (h) Officers working overtime assignments outside of their direct report locations shall utilize a spare AXON Flex and player at the location of their overtime assignment. Officers shall inform their supervisor of the utilization of the spares and send an email to the AXON Flex Technician documenting the spare unit's number to be used for that shift. If a spare is not available the officer shall contact the supervisor to inform them of this issue. The supervisor shall attempt to locate another spare unit on the line that may be available for use and provide the officer instruction on how to obtain it. If the officer and supervisor are unable to locate a spare for the assignment this shall be documented on all reports and citations taken by the officer assigned to the overtime shift.
- (i) When an officer discovers that his/her AXON Flex battery is becoming depleted (as evidenced by a yellow indicator light and/or a sounding tone when recording), the officer shall immediately exchange the battery for a charged replacement. If the officer will be delayed in exchanging the battery, or if the officer is unable to locate a charged replacement, the officer shall notify a supervisor and the supervisor will locate a charged replacement for the officer's use as soon as possible.

451.7 AXON FLEX IMPOUNDING PROCEDURE

At the end of each shift, officers shall place the AXON Flex into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the AXON Flex, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the AXON Flex is cleared of existing data.

451.8 REVIEW OF RECORDED MEDIA

Recorded files shall be reviewed in any of the following situations:

- (a) By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- (b) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, or criminal investigations.
- (c) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (d) By the Independent BART Police Auditor or his/her investigator.
- (e) With the expressed permission of the Chief of Police or authorized designee.
- (f) By the "System Administrators" for the purpose of managing the video evidence, quality assurance, and to categorize, label, provide case numbers to videos when needed.

Use of the AXON Flex

451.9 MOBILE VIDEO RECORDERS

The Department assigned AXON Flex shall be the only mobile video recorder allowed for Department employees while on-duty. Any other mobile video recorder shall only be used with the expressed permission of the Chief of Police.



DEPARTMENTAL
GENERAL
ORDER

Effective Date
05 Mar 14

I-15.1

Evaluation Coordinator:
Research and Planning Division
Commander

Index as:

Portable Video Management
System

Evaluation Due Date:
05 Sep 14

Automatic Revision Cycle:
2 Years

COMMUNICATION No. 4424

PORTABLE VIDEO MANAGEMENT SYSTEM

The purpose of this order is to set forth Departmental policy and procedures for the Portable Video Management System (PVMS), which includes a Portable Digital Recording Device (PDRD), designed to record both audio and video of field activity.

Progressive police departments are increasingly utilizing a variety of audio/video technology to further the mission of their departments. The Oakland Police Department has adopted PDRD technology because of its flexibility to capture audio/video evidence and enhance the Department's ability to conduct criminal investigations, administrative investigations, and review police procedures and tactics.

I. POLICY

- A. Officers shall utilize the PDRD in accordance with the provisions of this order.
- B. Unauthorized use, duplication, editing, and/or distribution of PDRD files are prohibited.
- C. Personnel shall not delete any PDRD file except as specified in Part V, C (request for deletion of an accidental recording.)
- D. Personnel shall not remove, dismantle or tamper with any hardware/software component or part of the PDRD.
- E. Members are prohibited from wearing or using personally owned video recording devices in place of or in conjunction with their issued PDRD.
- F. The Project Resource Management Unit is designated as the Custodian of Record for all PDRD data files.

II. PDRD ACTIVATION AND DE-ACTIVATION

- A. Members, including cover officers, shall activate their PDRD under the following circumstances:
1. Citizen contacts (“consensual encounters”) to confirm or dispel a suspicion that the citizen may be involved in criminal activity as a suspect, victim or witness. This does not include victims of sexual assault;
 2. Detentions and Arrests;
 3. Assessment or evaluation for a psychiatric detention (5150 W&I);
 4. Involved personnel, as defined by DGO J-4, during a vehicle pursuit;
 5. Serving a search or arrest warrant;
 6. Conducting any of the following searches on one’s person and/or property:
 - a. Incident to arrest;
 - b. Cursory;
 - c. Probable Cause;
 - d. Probation/Parole;
 - e. Consent; or
 - f. Inventory
 7. Transporting any detained or arrested citizen (excluding prisoner wagon transports); or
 8. Upon the order of a higher ranking member

Members shall activate their PDRD prior to initiating the circumstances enumerated in Part II. A. 1-7, above.

- B. PDRD Activation is not required during the following circumstances:
1. Members taking a report or conducting a preliminary investigation who reasonably believe no criteria for a required activation are present;
 2. During a preliminary investigation with a victim of a sexual assault;
 3. Members meeting with any Confidential Informant, as defined in DGO O-4, INFORMANTS; or
 4. Members on a guard assignment at a Police, Medical, Psychiatric, Jail or Detention facility. Members shall assess the circumstances of each guard assignment, on a continuing basis, to determine whether to discretionarily activate or de-activate their PDRD.
- C. De-activation of the PDRD
1. Members shall not de-activate their PDRD when it was activated as required by this policy until:
 - a. Their involvement in the citizen contact or detention has concluded; or
 - b. They receive an order from a higher ranking member; or
 - c. They are discussing administrative, tactical or law enforcement sensitive information away from the citizen; or
 - d. They are at a location where they are not likely to have interaction or a chance encounter with the suspect (e.g. outer perimeter post, traffic control post, etc.); or
 - e. The searches requiring activation as enumerated in Part II. A have concluded and the member believes he/she will have no further interaction with the person; or
 - f. They reasonably believe the recording at a hospital may compromise patient confidentiality; or
 - g. A pursuit has been terminated and the member performs the required actions as specified in DGO J-4, PURSUIT DRIVING or notifies Communications they are in-service; or

- h. They are interviewing an informant for the purpose of gathering intelligence. At the conclusion of the interview, the PDRD shall be re-activated until no longer required by policy.

After a member de-activates their PDRD, it is his/her responsibility to ensure they re-activate their PDRD should the circumstances require it.

- 2. When a member activates his/her PDRD, and such activation was not required by policy and the circumstances do not require continued recording, he/she may use his/her own discretion when deciding to de-activate the PDRD.
- D. Personnel shall not intentionally use the PDRD recording functions to record any personal conversation of, or between another member/employee without the recorded member/employee's knowledge.
 - E. Personnel are not required to advise or obtain consent from a person when:
 - 1. In a public place; or
 - 2. In a location where the member is lawfully present.
 - F. During crowd control, protest or mass arrest incidents members shall use their PDRD consistent with this policy unless otherwise directed by the Incident Commander. The Incident Commander shall document his/her orders in an appropriate report (e.g. Operations Plan or After Action Report) and provide the orders to all personnel.
 - G. Part II also applies to cover officers.

III. OFFICER, SUPERVISORY AND INVESTIGATORY REVIEW OF PDRD

- A. Level 1 Use of Force, Level 1 Pursuit or In-Custody Death
 - 1. In the event of a Level 1 use of force, Level 1 pursuit or an in-custody death, all PDRD recordings shall be uploaded to the server as soon as practical. No member may view any audio/video recordings prior to completing and submitting the appropriate report(s) and being interviewed by the appropriate investigative unit.
 - 2. Once a member's report(s) has been submitted and approved and the member has been interviewed by the appropriate investigator, the investigator will show the member his/her audio/video. This will

occur prior to the conclusion of the interview process. The member will be given the opportunity to provide additional information to supplement his/her statement and may be asked additional questions by the investigators.

B. Investigation of a Member

1. Criminal - Members who are the subject of a criminal investigation may only view their own audio/video recordings at the direction of the CID or IAD Commander.
2. Administrative – Members having received notification (Complaint Notification Report [CNR]) from the IAD and who are considered to be a subject or witness officer, may only view their own audio/video recordings at the direction of the IAD Commander or designee.

C. Investigators conducting criminal or internal investigations shall:

1. Advise the Project Administrator or a System Administrator to restrict public disclosure of the PDRD file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the PDRD file is of evidentiary value and process it in accordance with established protocols.
3. Investigators shall notify the System Administrator to remove the access restriction when the criminal/internal investigation is closed.

D. Supervisor Review

1. Supervisors shall conduct a random review of the PDRD recordings of each of their subordinates on a monthly basis.
2. When a supervisor is approving or investigating a UOF or vehicle pursuit they shall review the PDRD recordings of members who are a witness to or involved in the use of force.
3. Supervisors review of subordinate PDRD recordings shall include an assessment of;
 - a. Officer performance and training needs;
 - b. Policy compliance; and
 - c. Consistency between written reports and video files.

- E. When a member does not activate or de-activate his/her PDRD as required, supervisors and commanders shall determine if the delayed or non-activation was reasonable, based upon the circumstances. If the supervisor determines that the delay or non-activation was reasonable they shall document their justification in the UOF report or, if no UOF report is generated, in the officer's SNF. The supervisor's commander shall be advised and their name noted in the SNF.
- F. Supervisors, commanders, and managers who discover Class II misconduct during the review of PDRD video, that does not indicate a pattern of misconduct, may address the Class II misconduct through non-disciplinary corrective action. Supervisors shall, at a minimum, document any Class II violation of this policy in the officer's SNF.
- G. OIG staff conducting audits, training staff, supervisors, commanders, active FTOs and the FTO Coordinator may view PDRD files to investigate allegations of misconduct or evaluate the performance of members.
- H. When a member is authorized to view a PDRD recording by this policy, the audio/video recording shall be reviewed at a Department desktop computer by logging onto the server. Personnel reviewing the video shall document the reason for access in the "Add Details" field, under the "Comments" section on the video file.

IV. RESPONSIBILITIES

- A. The Project Administrator is designated by the Chief of Police and has oversight responsibilities to include, but not limited to, the following:
 - 1. Document malfunctions and equipment failures;
 - 2. Policy and procedure review and evaluation;
 - 3. Ensure PDRD files are secured and retained for a minimum of five (5) years;
 - 4. Ensure PDRD files are reviewed and released in accordance with federal, state, local statutes, and Departmental General Order M-9.1, PUBLIC RECORDS ACCESS; and
 - 5. Train the System Administrators to ensure consistency across the bureaus.
- B. System Administrators shall be designated by the Bureau Commander for non-patrol assignments. All Sergeants of Police assigned to the Patrol Division are System Administrators.

System Administrator responsibilities shall include, but are not limited to, the following:

1. Ensure officers are assigned a fully functional PDRD. Malfunctioning PDRDs shall be replaced immediately;
2. User training;
3. Return damaged equipment to the Project Administrator;
4. Make copies of PDRD files for court or other authorized activities;
5. Destruction of copied PDRD files not admitted as evidence in court; and
6. Approve/disapprove requests for deleting accidental recordings

V. OPERATING THE PDRD

- A. Members assigned a PDRD shall test the equipment prior to every shift. Once activated, the indicator light of a fully functioning PDRD should change from solid green to blinking green. If that does not occur, immediately report the malfunction to a supervisor.
- B. Members shall position and securely attach the camera to the front of their uniform or uniform equipment, as the primary location, to facilitate recording. Members shall not wear a PDRD that is damaged or not functioning properly due to low battery charge, damage, malfunction or memory exceeding capacity and shall notify their supervisor.
- C. Subject to the recording requirements of Part II of this policy, the PDRD may be temporarily removed and placed or mounted in the police vehicle or other location, to facilitate recording a citizen.
- D. Members shall upload PDRD data files at the end of and, if needed, during their shift to ensure storage capacity is not exceeded.
- E. Members shall ensure the battery is fully charged and operating properly at the beginning of their shift.
- F. Members shall report unresolved equipment malfunctions/problems to a System Administrator for camera replacement. Members shall check out a backup camera, as soon as practical, and utilize it as required until such time as their original camera is operational.

- G. Members are required to document the activation of their PDRD. Members are required to provide an explanation for any delayed or non-activation of their PDRD when PDRD activation is required.

Documentation shall be provided in at least one of the following reports, as appropriate:

1. Citation or Notice to Appear;
2. Crime Report;
3. Consolidated Arrest Report, electronic or paper, or Juvenile Record;
4. Field Interview; or
5. CAD notes

VI. PDRD FILE REQUESTS

A. Departmental Requests

Personnel requiring a copy of PDRD audio/video file(s) for court shall contact their first line supervisor. If the first line supervisor is unavailable, personnel shall contact any System Administrator.

1. In non-patrol assignments, requests for PDRD audio/video file(s) shall be forwarded to the designated System Administrator.
2. Any PDRD copies not entered into evidence shall be returned to the first line supervisor or a System Administrator for destruction.

B. Non-Departmental Requests.

Public Records requests shall be accepted and processed, in accordance with the provisions of federal, state, local statutes and DGO M-9.1, PUBLIC RECORDS ACCESS, and forwarded to the Project Administrator.

C. Request for deletion of an accidental recording.

In the event of an accidental activation of the PDRD and the resulting recording is of no investigative or evidentiary value, the respective personnel may request that the PDRD file be deleted by submitting an email request to their immediate supervisor with sufficient information to locate the PDRD file. Approved requests shall be submitted to the Project Administrator at PDRD@oaklandnet.com.

- D. A PDRD file may be utilized as a training tool for individuals, specific units, and the Department as a whole. A recommendation to utilize a PDRD file for such purpose may come from any source.
1. A person recommending utilizing a PDRD file for training purposes shall submit the recommendation through the chain-of-command to the Training Section Commander.
 2. The Training Section Commander shall review the recommendation and determine how best to utilize the PDRD file considering the identity of the person(s) involved, sensitivity of the incident and the benefit of utilizing the file versus other means.

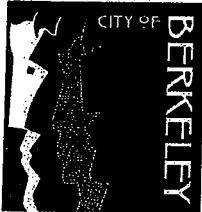
VII. REPLACEMENT PROCEDURES

- A. Personnel shall immediately report any recognized problems with the PDRD as well as a lost, stolen or damaged PDRD to their immediate supervisor. Upon notification, the supervisor shall facilitate the replacement of the PDRD as soon as practical.
- B. Supervisors shall document a lost, stolen or damaged PDRD as specified in DGO N-5, LOST, STOLEN, DAMAGED CITY PROPERTY, unless the PDRD stops functioning properly for no apparent reason and the supervisor does not observe any sign of damage.

By Order of

Sean Whent
Interim Chief of Police

Date Signed: _____



Office of the City Attorney

Date: February 18, 2015

COMMUNICATION No. 1202

To: Katherine J. Lee, PRC Officer

From: Zach Cowan, City Attorney

By: Sarah Reynoso, Assistant City Attorney 

Re: Request for Opinion Regarding Possible Disclosure of Board of Inquiry Findings Report to Complainants

Background

This responds to your January 13, 2015 memorandum inquiring whether the PRC can release the Board of Inquiry's ("BOI") Findings Report to complainants. The BOI Findings Report is issued after the BOI has completed its review of the complainant's allegations against a subject officer. The Findings Report summarizes the facts of the case, and for each of the allegations sets forth the BOI's reasoning and vote. At the conclusion of the BOI, its Findings Report is sent to the subject officer, BPD Internal Affairs, the Chief of Police and City Manager. The complainant receives only a summary of findings, which sets forth the finding, i.e., sustained, not sustained, etc., and the vote.

Issue

Can the PRC release its BOI Findings Reports to complainants?

Conclusion

No. PRC BOI Findings Reports are confidential personnel records under Penal Code sections 832.7 and 832.8 and cannot be released to the complainant. However, Penal Code Section 832.7 provides that the complainant may be advised of the disposition of the complaint, i.e., whether the allegation was sustained or not sustained, and the vote.

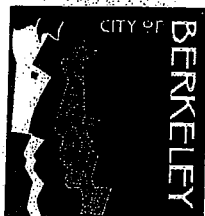
2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981.6960
E-mail: ZCowan@cityofberkeley.info

Analysis

Penal Code Section 832.7 provides that peace officer personnel records are confidential and cannot be disclosed except pursuant to a discovery motion under Evidence Code sections 1040 and 1043. Penal Code Section 832.8 subsection (e) specifically provides that complaints and complaint investigation records are "personnel records" protected from disclosure by Penal Code Section 832.7. Additionally, the City previously litigated the issue of whether PRC records and BOI findings were public records in *Berkeley Police Association v. City of Berkeley* (2008) 167 Cal.App.4th 385. The Court of Appeal rejected the City's argument that PRC records were not personnel records under Penal Code section 832.7 and held that "the records and findings of the PRC are protected from disclosure under section 832.7, subdivision (a) both as 'records maintained by any state or local agency pursuant to Section 832.5' and as 'personnel records.'" *Id.* at 404 (emphasis added). Thus, the Court's decision in *Berkeley Police Association v. City of Berkeley*, *supra*, specifically prohibits the PRC from releasing the BOI Findings Report to the Complainant.

However, pursuant to Penal Code section 832.7, subdivision (e) (1), the PRC may continue its practice of notifying the complainant of the disposition of the complaint. That section provides that the "department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition." *Id.* Accordingly, the only information the PRC may release to the complainant is whether his/her allegations against the subject officer were sustained, not sustained, etc., and the vote.

cc: Christine Daniel, City Manager
Dee Williams-Ridley, Deputy City Manager
Mark Numainville, City Clerk
Opn. Index. II.E.1; II.G.8.a.




Office of the City Attorney

COMMUNICATION No. 4377

Date: February 18, 2015

To: Katherine J. Lee, PRC Officer

From: Zach Cowan, City Attorney

By: Sarah Reynoso, Assistant City Attorney 

Re: Request for Opinion Regarding Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

Background

At its January 14, 2015 meeting, the PRC requested an opinion from the City Attorney on whether the PRC could obtain from the BPD Internal Affairs Bureau ("IAB") Division its records regarding prior complaints against the subject officer. The PRC believes that having access to the subject officers IAB complaints and findings may provide relevant information for a PRC Board of Inquiry ("BOI") hearing a complaint against that subject officer. The PRC does not currently have access to the IAB complaint investigation files.

You also asked whether the Police Chief could disclose to the PRC whether he had imposed discipline based on a PRC BOI sustained finding of wrong doing.

Issues

1. Can the PRC obtain access to subject officers IA complaint investigation file records as part of the PRC's complaint investigation process?
2. Can BPD disclose to the PRC whether discipline has been imposed as a result of a PRC BOI sustained finding of wrong doing?

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981.6960
E-mail: ZCowan@cityofberkeley.info

Conclusion

1. No. These records are confidential personnel records under Penal Code Section 832.7.
2. No. This information is also confidential personnel records under Penal Code Section 832.7.

Discussion

IAB is responsible for investigating BPD internal personnel complaints and citizen complaints filed directly with IAB. IAB also conducts parallel investigations of all citizen complaints filed directly with the PRC. BPD established IAB to comply with Penal Code Section 832.5, which requires law enforcement agencies to establish a process to investigate complaints against public safety officers.

Pursuant to Penal Code Section 832.7, IAB's complaint investigation records are confidential. Section 832.7 (a), provides, in part, that "Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

Consistent with Section 832.7, BPD General Order P-26 identifies all IAB files as confidential and limits access to these records to "the employee, the Chief of Police, authorized administrative staff, the employee's Division Commander, the City Attorney, Internal Affairs Bureau personnel, the Human Resources Director and the City Manager and others as required by law." BPD G.O. P-26 *Retention of Records* – 56. Thus, the only city employees who have access to IAB records are those that have some role in the disciplinary process of a police officer or the attorneys that represent the City in legal actions

In *Brown v. City of Berkeley* (1976) 37 Cal.App.3d 223, the Court invalidated a provision in the PRC ordinance which purported to give the PRC authority to make disciplinary recommendations of police officers. The Court held that this section of the PRC ordinance conflicted with City of Berkeley Charter Section 28, which vests in the City Manager sole authority over the discipline of all city employees. *Id.* at 233. Thus, while the PRC Ordinance grants the PRC the authority to investigate complaints against police officers, the PRC has no power or authority to discipline or recommend disciplinary action of a police officer. IAB complaint records cannot be disclosed to the PRC because it has no authority to recommend discipline.

Memo to Katherine Lee, PRC Officer

February 18, 2015

Page 3 Re: Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

For the same reasons cited above, the Chief cannot disclose to the PRC whether he has imposed discipline based on sustained findings of wrongdoing by the PRC, as those records are confidential personnel records under Section 832.7.

cc: Christine Daniel, City Manager
Dee Williams-Ridley, Deputy City Manager
Mark Numainville, City Clerk
Opn. Index II.E.1; II.G.8.a.

Lee, Katherine

From: Feldman, Gail
Sent: Tuesday, February 17, 2015 11:31 AM
To: Abel, David; Al-Hadithy, Nabil; Amoroso, Alexander; Angstadt, Eric; Brenman, Eric; Brown, Don L.; Bryant, Ginsi; Burns, Anne M; Corbeil, Donna; Davidson, Amy; DeSnoo, Neal; Erickson, Christina; Feldman, Gail; Geiken, Delfina M.; Greene, Elizabeth; Hollander, Eleanor; Javandel, Farid; Johnson, Carol; Klein, Jordan; Lee, Aaron; Lee, Katherine; Lee, Kristen S.; Merker, Mary Ann; Miller, Roger; Molina, Raquel P.; O'Connor, Katherine P.; Patterson, Carol; PRC (Police Review Commission); Rose, Sean; Schneider, Andrew; Talley, Leah; Thomas, Patricia A.; van Herick, Kristy; Wicker, Andrew; Wong, Wingyin; Zarnowitz, Sally
Subject: Recommendation from the Commission on Aging
Attachments: City Council Appointee Meetings recommendation.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

TO: All Berkeley Commissions and Commissioners
FROM: Commission on Aging (COA)
RE: Joining the CoA in urging Council members and the Mayor to pledge to hold annual meetings with their commission appointees

Fellow Commissions and Commissioners,

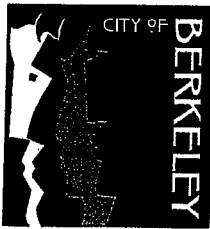
The Commission on Aging is writing to ask you to join us in urging Council members and the Mayor to hold annual commissioners' meetings with their appointees. Our rationale for asking this of council is contained in the recommendation attached. We would like you to put our recommendation before your commission for a vote of support before the end of March 2015. If the recommendation is passed by your Commission, please send a letter to council expressing this. If you'd like to add any comments, contingencies, changes or further suggestions, please feel free to do so.

Please contact Gail Feldman, Commission Secretary, for any information or questions at 981-5232 or gfeldman@ci.berkeley.ca.us

Sincerely,

Commission on Aging

COMMUNICATION No. 4311



Commission on Aging

[CONSENT OR ACTION]
CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council
From: Commission on Aging
Submitted by: George Porter, Commission on Aging, Chairperson
Subject: Annual Meetings of Commission Appointees

RECOMMENDATION

The Commission on Aging recommends that all City Council members and the Mayor hold annual "working" meetings that gather together their appointed Commission members. The purpose of the meetings would be for personal contact, information sharing and networking.

FISCAL IMPACTS OF RECOMMENDATION

The City will incur minimal costs in the implementation of this recommendation.

CURRENT SITUATION AND ITS EFFECTS

Currently there is very little established policy, either formal or informal, regarding face-to-face contact between Council members, the Mayor and their appointees to the various City Commissions and none addressing any such contact between a Councilmember (and the Mayor) and his or her full group of commissioners.

As things stand, since appointment to commissions are in general for four (4) years and often overlap Councilmember's (and the Mayor's) terms, if a given district seat changes hands, on occasion new Council members (and Mayor) and their inherited commissioners have never met in person. In addition to this, since reappointment of commissioners to a second term is often a routine matter, it is possible that eight (8) years can pass with little or no direct contact between a Councilmember (or the Mayor) and his or her appointee.

As far as contact between a Councilmember's (or the Mayor's) group of commissioners goes, there is no consistent policy and to the Commission on Aging's (CoA) observation in many, many cases commissioners have no idea of even the name of their counterparts on other commissions much less any understanding of who these people might be and how best to work with them towards common goals. Indeed, though some commissions are in constant contact with one another, since there is little established

policy encouraging broad based communication between commissions, the simple fact that shared interests exist is far too often missed.

BACKGROUND

Over the past couple of years outreach and communication to other commissions has been part of the CoA work plan. A few individual commissioners have sat in on other commissions meetings, introduced themselves, tried to establish lines of communication and then reported back to the CoA, especially as regards issue relating to the aging population. This has proved moderately fruitful, but time consuming and very hit or miss. During that same time period one commissioner had an appointing council member that held annual commissioner meetings and reported back. This practice seemed much more useful and a couple of other commissioners who had had similar experiences before this period confirmed this which started us down the road that led to this action item.

To the best of the CoA's discovery, in the past various Council members (and Mayors) have come up with individual ways of establishing lines of communications with their commissioners and between them. Though the CoA fully appreciates Council members' (and the Mayor's) need for latitude in determining these relationships, the end results are often uneven and sporadic. In the case of the annual commissioners meeting, over the years some Council members have always held such meetings, others only on occasion and some not at all. Over those same years the individual commissions have had memberships with widely varying exposure to and understanding of the broad set of Municipal concerns the effect their work and much of the time in meetings can be spent bringing everyone up to date regarding these.

The CoA voted at its regular meeting of January 21, 2015 to recommend that City Council members (and the Mayor) hold annual "working" meetings that gather together their appointed Commission members. The purpose of the meetings would be for personal contact, information sharing and networking.

M/S/C (Jacquin/Hallberg) Ayes: Castello-Kramer, Hallberg, Jacquin, Lazaris, Porter, Ratnum, Schechner, Stross; Noes: None; Abstain: None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts

RATIONALE FOR RECOMMENDATION

The CoA feels that Council members (and the Mayor) establishing the habit of an annual commissioners meeting is a very simple and cost effective way of both addressing the concerns expressed above and of opening doors to new opportunities insofar as:

- 1) It ensures a basic level of the needed personal contact between Council members

and their commissioners.

- 2) For all attendees it puts a "human face" on the work of the various commissions and creates the sense of a broader community effort, the value of which should not be underestimated.
- 3) A well run meeting where each commissioner has a chance to briefly recap the last year's work of the commission he or she sits on establishes a baseline of information regarding Municipal concerns.
- 4) It encourages greater communication between the commissions which will result in:
 - a) greater appreciation of one another's work
 - b) greater awareness of the current scope of one another's work
 - c) greater appreciation of the complexity of the Council's work
 - d) more efficient use of time in commission meetings
 - e) equal opportunity for all commissioners for access to useful information
 - f) the recognition of and better cooperation in achieving shared goals
 - g) more efficient sharing of resources
 - h) increased transparency between commissions
- 5) In general, it will enliven the working relationship between Berkeley's elected officials and its citizen commissions and help ensure that our investment in this cooperative effort will yield greater returns.

Again, the CoA's suggestion here is that these be casual and friendly working meetings, not just social events. Though we fully appreciate that Council members (and the Mayor) already carry a heavy load, the CoA strongly feels that these yearly meetings will be of so much value to the municipality that we unanimously urge individual Council members (and the Mayor) to take this additional, small burden upon themselves.

ALTERNATIVE ACTIONS CONSIDERED

The CoA had considered that holding the meetings should be done on good faith, that they need not be an official requirement but instead should take the form of a pledge to "do his or her best to hold such yearly events". After further consideration, that language was removed from the recommendation and the accompanying background of the report.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report."

CONTACT PERSON

Gail Feldman, Commission Secretary, HHCS, 981-5232

Police Review Commission
Standing Rules
(revised as of X/X/15)

A. PURPOSE

These Standing Rules are established by the Police Review Commission to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Police Review Commission, except that the Commission may not adopt rules that conflict with the enabling Ordinance, Commissioners' Manual, or Regulations for Handling Complaints Against Members of the Police Department.

C. AGENDA ITEMS – REGULAR MEETINGS

Individual commissioners shall submit agenda items to the commission secretary by 12:00 noon one week before the meeting date. (This will almost always be a Wednesday.)

D. COMMUNICATIONS

Individual commissioners shall submit communications to be included in the agenda packet to the commission secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed in hard copy at the meeting, and may also be distributed to Commissioners via email. If communications are received after 3:00 p.m. on the meeting day, the commission secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. Agenda items shall be introduced by the commission member or staff member who proposed the item. The chair shall allow an initial period for discussion. When a motion is introduced and seconded, the chair may set a time limit of no less than two minutes for each commissioner for additional comments before putting the matter to a vote.
2. During discussion of a motion, the chair shall make every attempt to allow alternating positions to be heard.
3. Action on a motion may be by either voice or general consent. In either case, the chair shall ask the commission secretary to repeat the motion before the action.

4. Guest speakers who are not on the agenda may address the commission only by general consent, or upon a formal motion.

F. PUBLIC COMMENT

The chair, subject to the consent of the commission, may determine the time limit for each speaker and the total number of speakers.

G. POLICY COMPLAINTS AND REVIEWS

1. An inquiry into a policy, when initiated by a civilian filing a policy complaint form, is a "policy complaint."
 - a) The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations for Handling Complaints Against Members of the Police Department..
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the Chair, who will consider the number of persons wishing to speak. Commissioners may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the Commission.
2. A Commission-initiated policy review may commence upon a majority vote of the Commissioners.
 - c) Commissioners shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole Commission, assigning a Commissioner to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full Commission.
 - d) The full Commission may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action.

H. REGULAR MEETINGS

1. Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The commission shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.
2. Regular meetings shall commence at 7:00 p.m., and shall be held at the South Berkeley Senior Center and other locations as may be determined by the Commission.

I. ELECTIONS

The elections for Chair and Vice-Chair shall occur at the first regular meeting in January whenever possible.

J. MUTUAL AID AGREEMENTS

The Commission shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the pacts between the BPD and other law enforcement entities.

K. ANNUAL REPORT

The commission secretary shall endeavor to present the annual report for the Commission's approval no later than June 1 of each year. The Foreword shall be written by the Commissioner who served as Chair in the year of the report.

L. FAMILIARITY WITH BERKELEY POLICE DEPARTMENT

Within the first 6 months of their appointment, newly-appointed commissioners shall endeavor to:

- 1) complete a ride-along with a sworn police officer, and
- 2) meet with Chief of Police and his/her command staff.

M. KNOWLEDGE OF APPLICABLE LAWS AND RULES

Commissioners should be generally knowledgeable of the Police Review Commission's enabling Ordinance (Ordinance No. 4644-N.S.; B.M.C. Chapter 3.32), the Regulations for Handling Complaints Against Members of the Police Department, and these Standing Rules. They should also bring copies of these documents to all commission meetings.



Office of the City Manager

COMMUNICATION No. 1741

January 14, 2015

To: Honorable Mayor and City Council members

From: Christine Daniel, City Manager *CD*

Subject: Semi-Annual Report of Marijuana Enforcement Activity

The table below is a compilation of the marijuana enforcement activity which occurred in the City of Berkeley, or was engaged in by Berkeley officers in other cities, during the period of July 1, 2014 through December 31, 2014.

The specific Health and Safety Code sections related to marijuana which were charged are defined in the following table:

11357(a) HS	Possession of concentrated cannabis (hashish)
11357(b) HS	Possession of not more than an ounce of marijuana
11357(c) HS	Possession of over one ounce of marijuana
11357(d) HS	Adult Possession on school grounds during school activity
11357(e) HS	Minor possessing marijuana on school grounds during school activity.
11358 HS	Cultivation of marijuana
11359 HS	Possession of marijuana or hashish for sale
11360 HS	Sales of marijuana or hashish
11361 HS	Inducing a minor to sell or use marijuana

The following information is provided in compliance with BMC 12.224.070.

Ticket/Case Number	Date	Statute
Case# 2014-00026124	8/19/2014	11359
Case# 2014-00039631	7/8/2014	11357 (A)
Case# 2014-00039790	7/8/2014	11359
Case# 2014-00040048	7/10/2014	11357 (A)
Case# 2014-00041448	7/16/2014	11359
Case# 2014-00042075	7/19/2014	11360 (A); 11359
Case# 2014-00044715	8/1/2014	11359

January 14, 2015

Re: Semi-Annual Report of Marijuana Enforcement Activity

Ticket/Case Number	Date	Statute
Case# 2014-00045122	8/2/2014	11357 (A)
Case# 2014-00046618	8/9/2014	11359
Case# 2014-00047244	8/12/2014	11357 (A)
Case# 2014-00047644	8/14/2014	11359
Case# 2014-00047658	8/14/2014	11357 (A); 11360 (A)
Case# 2014-00047690	8/14/2014	11361 (A); 11360 (A); 11359
Case# 2014-00047704	8/14/2014	11360 (A)
Ticket# 40661	8/14/2014	11357 (A)
Ticket# 40575	8/14/2014	11357 (A)
Case# 2014-00048878	8/20/2014	11360 (A); 11359
Case# 2014-00048888	8/20/2014	11360 (A); 11359
Case# 2014-00048893	8/20/2014	11360 (A); 11359
Ticket# 40762	8/20/2014	11357 (A)
Ticket# 40838	8/20/2014	11357 (A)
Case# 2014-00049381	8/22/2014	11360 (A); 11359
Case# 2014-00049406	8/22/2014	11359
Case# 2014-00049606	8/23/2014	11359
Case# 2014-00049901	8/25/2014	11357 (A)
Case# 2014-00050857	8/29/2014	11359
Case# 2014-00052322	9/5/2014	11360 (A); 11359
Case# 2014-00052554	9/5/2014	11357 (A)
Case# 2014-00052789	9/6/2014	11357 (A); 11359
Case# 2014-00053445	9/10/2014	11360 (A); 11359
Case# 2014-00053462	9/10/2014	11357 (A)
Case# 2014-00053572	9/10/2014	11357 (A)
Case# 2014-00057006	9/26/2014	11357 (A)
Case# 2014-00057385	9/27/2014	11359
Case# 2014-00057857	9/29/2014	11359
Case# 2014-00059813	10/8/2014	11357 (A)
Case# 2014-00059956	10/8/2014	11359
Case# 2014-00060565	10/11/2014	11357 (B); 11357 (A)
Case# 2014-00060577	10/11/2014	11357 (B)
Case# 2014-00060898	10/13/2014	11357 (A)
Case# 2014-00062542	10/20/2014	11357 (C)
Case# 2014-00064975	10/31/2014	11357 (A)
Case# 2014-00065069	11/1/2014	11359

January 14, 2015

Re: Semi-Annual Report of Marijuana Enforcement Activity

Ticket/Case Number	Date	Statute
Case# 2014-00066424	11/7/2014	11359
Case# 2014-00066577	11/8/2014	11359
Case# 2014-00067984	11/15/2014	11359
Case# 2014-00068677	11/18/2014	11359
Case# 2014-00073838	12/18/2014	11359
Case# 2014-00074842	12/23/2014	11359

cc: Police Review Commission
Beth Pollard, Interim Deputy City Manager
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Michael K. Meehan, Chief of Police
Matthai Chakko, Public Information Officer

Chapter 12.24 MARIJUANA POLICY

Sections:

- 12.24.010 Purpose.
- 12.24.020 Efforts to decriminalize and/or legalize marijuana in California.
- 12.24.030 Law enforcement priority of marijuana statutes.
- 12.24.040 Arrests and citations for violations of marijuana statutes.
- 12.24.050 No expenditure of funds for enforcement of marijuana statutes.
- 12.24.060 University of California police to adhere to City policy.
- 12.24.070 Berkeley Police Department reporting requirement.

12.24.010 Purpose.

The unjust laws restricting the cultivation and use of marijuana must be repealed. The much publicized paraquat poison scare in 1978 revealed again how the government's efforts to stop the use of marijuana are more likely to harm our citizens than to protect them. The people of Berkeley have supported decriminalization efforts on the ballot in 1972 and 1973, and through this initiative intend to do so again. It has been six years since the last such ballot measure passed, and still the laws against marijuana remain on the books and continue to be enforced. We are impatient for reform of the marijuana laws, and the return of our basic freedoms of life, liberty and the pursuit of happiness.

The ordinance codified in this chapter will:

- A. Allow the people of Berkeley to become more economically self-reliant as increased cultivation of marijuana for personal use reduces the current expenditure of millions of dollars for marijuana grown outside Berkeley;
- B. Reduce the current expenditure of public funds for senseless enforcement of marijuana laws; available funds should be used for needed community services, not harassment;
- C. Remove the fear of prosecution from people who need to use marijuana for treatment of glaucoma, chemotherapy side effects and other medical problems;
- D. Decrease tension between the police and members of the community who are made to feel like criminals as a result of marijuana law enforcement;
- E. Reduce the theft of marijuana plants by making it possible to report such thefts to the police; and
- F. Instruct the City government to support all efforts toward the reform of marijuana laws. Therefore, the purpose of this chapter is to establish the marijuana policy for the City. (Ord. 5137-NS § 1, 1979)

12.24.020 Efforts to decriminalize and/or legalize marijuana in California.

It is the desire of the people of Berkeley that marijuana be legalized in California. In this context, the people of Berkeley fully support the present statewide efforts to further decriminalize and/or legalize marijuana. The City Council is directed to lobby in favor of the decriminalization and legalization of marijuana, and shall seek to ensure that the Berkeley Police Department undertakes similar lobbying. (Ord. 5137-NS § 5, 1979)

12.24.030 Law enforcement priority of marijuana statutes.

The City Council shall seek to ensure that the Berkeley Police Department gives lowest priority to the enforcement of marijuana laws. (Ord. 5137-NS § 2, 1979)

12.24.040 Arrests and citations for violations of marijuana statutes.

The City Council shall seek to ensure that the Berkeley Police Department makes no arrests and issues no citations for violations of marijuana laws. (Ord. 5137-NS § 3, 1979)

12.24.050 No expenditure of funds for enforcement of marijuana statutes.

The City Council shall not expend or authorize the expenditure, nor shall any expenditures be made by the City, of public funds for any activity or activities performed by any employee or agent of the City, including but not limited to members of the Berkeley Police Department, directed toward enforcement of Sections 11357, 11358, 11359, and/or 11360 of the California Health and Safety Code. (Ord. 5137-NS § 4, 1979)

12.24.060 University of California police to adhere to City policy.

The people of Berkeley declare that the police of the University of California at Berkeley should adhere to the marijuana policy of the City as established by this chapter. (Ord. 5137-NS § 6, 1979)

12.24.070 Berkeley Police Department reporting requirement.

The City Council shall ensure that the Berkeley Police Department reports semiannually to it and the Berkeley Police Review Commission regarding all marijuana law enforcement activities, if any, engaged in by the Berkeley Police Department, and by county, state, federal and/or other law enforcement agencies within Berkeley. (Ord. 5137-NS § 7, 1979)

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 2-26-15**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Accreditation Formed 2-22-12 Renewed 2-27-13 Renewed 6-25-14	(Allen) Perezvelez	Perezvelez	Capt. Harris Sgt. Stines Sgt. Montgomery
Regulations Formed 6-26-13 Renewed 6-25-14	Bernstein Rogers Finley	Bernstein	Ofc. Bartalini PRC Officer PRC Investigator
Suspicious Activity Reporting Formed 11-12-14	Bernstein Rogers Lippman Vicente		Capt. Harris Lt. D. Reece
Transgender General Order Formed 2-25-15	Bernstein Perezvelez Rogers		Capt. Harris

COMMUNICATION No. 4370

Lee, Katherine

COMMUNICATION No. 4160

From: Lee, Katherine
Sent: Thursday, February 26, 2015 6:11 PM
To: Lee, Katherine
Subject: G.O. B-4 - Fair & Impartial Policing -- data collection

Dear PRC Commissioners,

Last night you asked me to write to the Chief about how reporting of the data collected under G.O. B-4 will happen. I asked him about this today, and he said that they're not sure yet, as they will be working with the Center for Policing Equity on this. Currently, the BPD is reviewing a draft agreement with the CPE for their services.

I hope this information will suffice in lieu of a letter for now. I will make a note to have an update for you by the March 11 meeting.

Sincerely,
Kathy

Katherine J. Lee
Police Review Commission Officer
City of Berkeley
510.981.4960

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Wednesday, February 25, 2015 11:43 AM
To: Lee, Katherine; Norris, Byron
Subject: FW: Police misconduct
Attachments: 20150224_200730.jpg

COMMUNICATION No. 4392

From: trrsolar [<mailto:trrsolar@yahoo.com>]
Sent: Tuesday, February 24, 2015 8:36 PM
To: PRC (Police Review Commission)
Subject: Police misconduct

BENKELEY POLICE

1764

CA 1435122

B

