

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, December 14, 2016
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**
Regular Meeting of November 9, 2016
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
Status of complaints; other items.
- 7. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 8. OLD BUSINESS (discussion & action)**
 - a. Commendations of BPD personnel January through June 2016.
From: PRC Officer
(See October 26, 2016 packet.)
 - b. Review draft of response to City Manager's September 12, 2016 letter regarding the standard of proof used in BOI hearings.
 - c. Review of BPD marijuana enforcement report.
From: Commissioner Bernstein

- d. Review revised General Order C-64 and Commander's Guide
(To be delivered.)

9. NEW BUSINESS (discussion & action)

- a. Establish 2017 Regular Meeting schedule
From: PRC Officer
- b. Consider amendment to PRC Standing Rules, Section J, Appointment of Members of the Public to Subcommittees, to provide that public members must be residents of the City of Berkeley.
From: Commissioner Bernstein
- c. Report on meeting with BPD regarding Body-Worn Camera policy
From: PRC Officer
(To be delivered.)
- d. Review list of 25 Lexipol policies reviewed by BPD; identify specific policies for review and/or questions for BPD.
From: Commission
- e. Presentation of BPD stop data
From: Commissioner Lippman
- f. Presentation by representative from Center for Policing Equity
From: Commission
- g. Prioritization of PRC tasks and requests to BPD.
From: PRC Officer

10. SUBCOMMITTEE APPOINTMENTS, REPORTS, AND RECOMMENDATIONS (discussion & action)

- a. Fair & Impartial Policing Subcommittee
Update; schedule next meeting date.
- b. Mutual Aid Pacts Subcommittee
Update; schedule next meeting date.
- c. Media Credentialing Subcommittee
Update; schedule next meeting date.
- d. Surveillance and Community Safety Ordinance Subcommittee
Update; schedule next meeting date.
- e. General Orders C-64, etc. Subcommittee
Consider dissolving.
- f. Body-Worn Cameras Subcommittee
Consider dissolving.
- g. Outreach Subcommittee
Consider additional appointment; 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

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matters:

13. REVIEW OF CALOCA DECISION

Complaint #2380 *(Decision and brief to be distributed during closed session.)*

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, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

PRC REGULAR MEETING ATTACHMENTS

December 14, 2016

MINUTES

November 9, 2016 Regular Meeting Page 7

AGENDA-RELATED

Item 8.b –Draft response to City Manager’s September 12, 2016 letter regarding the standard of proof used in BOI hearings; and City Manager’s September 12, 2016 letter. Page 13

Item 8.c – Semi-Annual Report of Marijuana Enforcement Activity from the City Manager to the Mayor and City Council members, for the period January 1, 2016 through June 30, 2016; demographic breakdown of Jan-June 2016 incidents; report and analysis of marijuana enforcement activity July – Dec. 2013. Page 17

Item 9.a – 2017 Calendar with proposed meeting dates for the year. Page 31

Item 9.b – Proposed amendment to PRC Standing Rules. Page 33

Item 9.d – List of Lexipol policies reviewed by BPD. Page 35

Item 9.g – PRC Priority List updated 11-10-2016. Page 37

Item 9.g – Prioritization of PRC requests to BPD updated 11-10-2016. Page 38

Item 10 – Subcommittee assignments as of 12-5-2016. Page 39

COMMUNICATION(S)

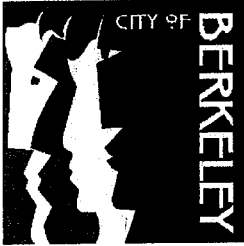
BPD General Order W-1 dated November 10, 2016: Public Recording of Law Enforcement Activity. Page 41

BPD Bulletin Notice dated November 28, 2016 re Promotions. Page 45

Approved PRC Regular Minutes dated October 26, 2016. Page 47

Resignation letter from PRC Chair George Perezvelez dated December 4, 2016. Page 53

2016 PRC Annual Commission Attendance Report for the period November 1, 2015 through October 31, 2016. Page 55



Police Review Commission (PRC)

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

**Wednesday, November 9, 2016
7:00 P.M.**

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

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

Present: Commissioner Terry Roberts (Vice Chair)
Commissioner Alison Bernstein (left 9:15 p.m.)
Commissioner Kimberly DaSilva
Commissioner George Lippman
Commissioner Michael Sherman (left 8:40 p.m.)
Commissioner Kad Smith
Commissioner Ari Yampolsky

Absent: Commissioner George Perezvelez (Chair)

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, (left 9:30 p.m.) Sgt. Ben Cardoza, Sgt. Sean Ross

2. APPROVAL OF AGENDA

By general consent, the agenda was approved with one change, to move Item #9.a. to follow Item #7.

3. PUBLIC COMMENT

There were no speakers.

4. APPROVAL OF MINUTES

The following corrections to the minutes of the October 26, 2016 regular meeting were requested:

In Item #9.a., add "the issue of" in front of "ABC enforcement" and add "the subject of" in front of "BPD's recruitment efforts".

In Item #8.f., the language of the amendments agreed upon should be shown somewhere.

In Item #7, 5th point, replace "have" [yet written our report] with "has not."

Motion to approve Regular Meeting Minutes of October 26, 2016, with the corrections noted above.

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

Ayes: DaSilva, Lippman, Roberts, Sherman, Yampolsky

Noes: None

Abstain: Bernstein, Smith

Absent: Perezvelez

5. CHAIR'S REPORT

No report.

6. PRC OFFICER'S REPORT

- Jerry Javier resigned from the Commission effective yesterday. Commissioner Sherman expressed appreciation for his service; others encouraged to email their thanks directly to Mr. Javier as they see fit.
- No new complaints filed since the last meeting; Complaint #2407 went to mediation and is now closed.
- Upcoming BOI hearing on Wednesday (11/15) with Commissioners Bernstein, Roberts and Sherman.
- City offices will be closed Friday, 11/11, for Veteran's Day.
- The Center for Policing Equity's report on the Austin, TX PD is in this week's packet; per Chief Greenwood, it is an example of what the report for Berkeley might look like.
- PRC Officer asked Comm. Bernstein to report on the Int'l Assoc. of Chiefs of Police conference: She attended 2 of the 4 days with the Chief and other command staff. Impressed with the quality of presentations and depth of discussions. Very forward-thinking and positive. Message: how do we do better. Have to move beyond the old "Protect & Serve" model. Chief Greenwood added that he sent more people (5 officers & 1 PRC Commissioner) than in years past and found that valuable; will continue to do so.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

- BPD will be providing use-of-force data to CPE. Hearing concerns about further delaying CPE's report, Chief will try to get an estimated delivery date. CPE uses a climate survey to gauge attitude of PD members. Would like us to participate in, since part of their methodology. Chief will also see if someone from CPE local can attend a PRC meeting.
- Following last night's elections, been dealing with demonstrations. Light to no violence. Today BHS had rally; last few have been very well-organized and peaceful. Tonight about 200 marching down Telegraph into Oakland, where 2000 are gathered.
- Just had 3rd training on revised GO C-64 (Crowd Management).

- Staffing: 3 recruits in training; 10 in academies; 7 reservations for academies in Jan.; looking for laterals. HR helping out with getting agility tests done. Competing with SF; Richmond. Will have a lot of new officers, though will require supervision.
- Interviewing candidates for promotion to Sergeant and Lieutenant; about 2 – 4 promotions in each position.

Questions:

- Status of Commander's Guide? Meeting tomorrow and will get to PRC this week.
- Your status? Currently Interim Chief. City Manager has said no plans for a search right now.
- Next Body-Worn Camera meeting? Have PRC Officer coordinate with Chief's secretary.
- Incidents connected to removing homeless encampments? Very familiar with each incident and the activities. Part of ad hoc committee that included two Councilmembers and representatives of homeless to discuss what is their goal, and what can be done other than enforcement. Continue to be involved in communication.

8. OLD BUSINESS (discussion & action)

- a. Status of General Order W-1, Right to Watch and consideration of Lexipol Policy 426
Heard following Item #9.a.

Motion to carry this item over to the next meeting for final consideration of Lexipol 426.

Moved by Lippman; **Motion failed for lack of second.**

Motion to support Lexipol Policy 426 submitted by the BPD, with this addition to section 426.3: insert "observe and/or" in the first sentence, so that it reads, "Members of the public who wish to observe and/or record law enforcement activities are limited only in certain aspects."

Moved/Seconded (Smith/Yampolsky) **Motion Carried**

Ayes: DaSilva, Roberts, Smith, Yampolsky

Noes: None Abstain: Lippman

Absent: Bernstein,

Perezvelez, Sherman

- b. Review of BPD marijuana enforcement report.
(Item postponed to the next meeting.)
- c. Handout on significant laws and court cases affecting scope and powers of the Berkeley PRC; discussion of applicability to aspects of the BOI process.
(Item postponed to the next meeting.)

- d. Commendations of BPD personnel January through June 2016.
(Item postponed to the next meeting.)

9. NEW BUSINESS (discussion & action)

- a. Achieving agreement with BPD on consulting with PRC on all new General Orders and changes to existing General Orders.

Heard following Item #7.

Chief Greenwood described process of and personnel involved in renewed effort to convert all General Orders into the Lexipol system. He will send the PRC Officer a list of the first 25 policies being worked on, for distribution to Commission and to place on the next agenda.

Going forward, for new policies that are issued (and revisions to existing policies), Chief will send a copy to the PRC Officer simultaneous with distribution to department. PRC Officer will include in next PRC agenda packet. **A majority of the PRC agreed to this process.**

Chief will consider whether it is feasible for his department to inform the PRC what policies are close to being issued, so that PRC can provide feedback.

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. General Orders C-64, etc. Subcommittee
No report.
- b. Fair & Impartial Policing Subcommittee
Update; next meeting date November 14, 2016.
- c. Mutual Aid Pacts Subcommittee
PRC Officer to coordinate setting next meeting date.
- d. Media Credentialing Subcommittee
Tonight's meeting did not occur due to lack of quorum. PRC Officer to coordinate setting next meeting date.
- e. Surveillance and Community Safety Ordinance Subcommittee
Next meeting scheduled for Nov. 22 at 6 p.m. The Vice-Chair appointed himself to replace Jerry Javier on this subcommittee.
- f. Outreach Subcommittee
No report.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There were no speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matters:

13. REVIEW OF CALOCA DECISION

Complaint #2380.

(Item postponed to the next meeting.)

End of Closed Session

14. ADJOURNMENT

By general consent, the meeting was adjourned at 9:35 p.m.

DRAFT

Dear Ms. Williams-Ridley,

Thank you for your response of September 12, 2016, to our inquiry regarding your decision during the meet and confer process to abandon the PRC's amendment to the standard of proof used in our Board of Inquiry. Although we appreciate you taking the time to respond, there are a number of things in your response that we find deeply troubling. We are concerned that the current policies and practices of the City Manager's office are a grave disservice to the spirit and letter of the PRC enabling ordinance, and greatly impede our ability to operate as an independent, fact-finding body.

Section 10, subsection (f) of the 1973 PRC enabling ordinance states

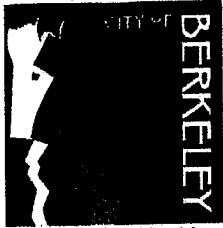
The Commission established by this Ordinance shall have the following powers and duties:

...
f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes

It is not clear to the Commission how every proposed change to PRC regulations would properly be subject to meet and confer under the applicable law. For your administration to so hold, without reservation, seems to us to directly contradict the will of the voters as expressed in the above noted section of the Ordinance. This position does real damage to the independence of the PRC by subjecting changes to our internal operations to approval by the BPA.


Your letter also fails to acknowledge the significant policy reasons that underscore the need for the change in the standard of proof. To be clear, the PRC passed this change because we believed it was vital to our ability to carry out our mandate. We have repeatedly explained how the use of the clear and convincing standard is both inconsistent with the standard used across California, and indeed the country, when evaluating allegations of misconduct by governmental employees. We have also pointed out the inherent unworkability of having a single arbiter balance and consider fact-finding of the same incident from two different bodies –Internal Affairs and the PRC - when each employs a different standards of proof. Your letter addresses none of these concerns.

Most critically, you fail to explain why the City should continue to insist that the PRC employ a standard that as a policy matter gives more weight and importance to police officers' job security than to addressing the alleged wrong suffered by a member of the community. To force the PRC to hold to an unreasonably high standard of proof above the state and national norms unnecessarily deprives the BPD of a carefully considered and well-regulated independent input into the disciplinary process. It also frustrates community sentiment at a time when more, not less, of such independent input is required. If we, as a City, are to truly embrace procedural justice, we must certainly insure that the system for civilian review and accountability reflects the values of our community and has a process that is fair to all parties. The clear and convincing standard of proof does neither.



Office of the City Manager

MEMORANDUM

Date: September 12, 2016
To: Katherine J. Lee, Police Review Commission Officer
CC: George Perezvelez, Chair, Police Review Commission
From:  Dee Williams-Ridley, City Manager
Subject: Standard of Proof

I received a letter from the Police Review Commission (PRC) Chair George Perezvelez requesting that I explain my reasons for not implementing the change to the burden of proof proposed by the PRC. Mr. Perezvelez stated that the PRC had decided to amend the standard of proof from the "clear and convincing evidence" standard to a lower "preponderance of the evidence" standard. He noted that on two occasions, the PRC unanimously approved the shift to the preponderance standard, after careful consideration of the policy issues and an investigation of the established best practices. He further stated that the PRC's enabling ordinance specifically empowers the PRC to "adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary." (BMC 3.32.090.E)

On August 1, 2016, I met with you, Mr. Perezvelez and Terry Roberts, along with the Police Chief and Assistant City Attorney, to discuss this letter amongst with other topics. While the issue of meet and confer was not mentioned in Mr. Perezvelez's letter, we discussed this requirement during our meeting, and the group expressed that it would be helpful for me to share with the PRC an explanation of the meet and confer process and how it impacted the proposal to change the standard of proof.

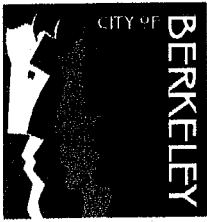
It is important to recognize the long-established role that the meet and confer process has in the adoption of changes to the PRC's Regulations. The City Manager is obligated, consistent with state law and the provisions of the Memorandum of Agreement with the Berkeley Police Association (BPA), upon request of the union, to meet and confer with representatives of the BPA and endeavor to reach agreement on the practical consequences "**of any changes** in wages, hours and **other terms and conditions** of employees represented by the Association." Meet and confer continues until management and labor either reach an agreement or reach impasse. "Impasse"

means that the City and the BPA have a dispute over matters within the scope of representation and have reached a point in meeting and negotiating over the dispute at which their differences in positions are ***so substantial or prolonged*** that future meetings would be futile. Impasse is only reached after multiple meetings and extensive effort on both sides to reach an agreement.

To choose to go down this path on a matter likely to lead to impasse, I need to weigh and balance the benefit to the City in pushing forward an attempt to implement a change against the impact reaching impasse would have on the City, including staff morale and the ongoing relationship with the represented employees and association leadership. I do not take these matters lightly and recognize the thought and deliberation that the PRC has put into making this proposal. However, I ultimately must make the decision that is in the overall best interests of the City.

The change proposed to the standard of proof in the PRC's Regulations was identified as a change that required engaging in the meet and confer process. The standard of proof, clear and convincing evidence, has been the standard used by the PRC for more than 30 years. I cannot discuss the specific details of the meet and confer discussions in this or any other matter as the process is confidential. I can confirm that it was clear going into negotiations that the BPA was not in agreement with the proposed change to the standard of proof. It is also my understanding that this is not the first time the topic of changing the standard of proof has come up as a topic of meet and confer, and has been identified as a non-negotiable issue.

As I am ultimately responsible for ensuring that the City has a productive working relationship with all of our represented employees, I need to make critical decisions about which issues I will pursue further and which I will take off the table for that particular meet and confer process. Considering that 44 policy changes to the PRC Regulations were ultimately agreed to at the conclusion of the meet and confer process and have now been implemented, I believe that the process was an overall success.



Office of the City Manager

July 26, 2016

To: Honorable Mayor and City Council members
From: *DMK* Dee Williams-Ridley, City Manager
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 January 1, 2016 through June 30, 2016.

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.

July 26, 2016

Re: Semi-Annual Report of Marijuana Enforcement Activity

<u>Case/Citation Number</u>	<u>Date</u>	<u>Statute</u>
2016-00000187	1/1/2016	11359
49912	1/9/2016	11357 (B)
50091	1/9/2016	11357 (B)
2016-00001955	1/11/2016	11359
2016-00002840	1/15/2016	11359
2016-00002840	1/15/2016	11359
50263	1/24/2016	11357 (B)
49986	1/24/2016	11357 (B)
50122	1/29/2016	11357 (B)
50074	1/30/2016	11357 (A)
2016-00006466	2/2/2016	11357 (A)
2016-00006552	2/2/2016	11360 (A) 11359
2016-00006563	2/2/2016	11359
2016-00006569	2/2/2016	11360 (A) 11359
2016-00006609	2/2/2016	11357 (A)
50176	2/2/2016	11357 (B)
2016-00009609	2/17/2016	11360 (A) 11359
2016-00011864	2/28/2016	11359
2016-00013351	3/6/2016	11357 (B)
2016-00013469	3/7/2016	11359
2016-00013927	3/9/2016	11359
2016-00015100	3/15/2016	11357 (A)
2016-00016007	3/18/2016	11359
2016-00016052	3/18/2016	11359
2016-00016108	3/20/2016	11359
50869	3/21/2016	11357 (B)
2016-00017901	3/28/2016	11359
2016-00019322	4/3/2016	11360 (A) 11359
2016-00019532	4/4/2016	11357 (A)
2016-00019551	4/5/2016	11357 (A)
2016-00020473	4/8/2016	11359
2016-00020709	4/9/2016	11357 (A)
2016-00021576	4/13/2016	11357 (B)
2016-00023318	4/21/2016	11357 (A)
51375	4/22/2016	11357 (B)
51369	4/23/2016	11357 (B)
51732	4/27/2016	11357 (B)
2016-00025896	5/2/2016	11357 (B)
2016-00026329	5/4/2016	11357 (A)
51767	5/4/2016	11357 (B)
2016-00026719	5/6/2016	11359
2016-00026723	5/6/2016	11360 (A) 11359

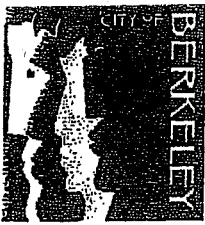
<u>Case/Citation Number</u>	<u>Date</u>	<u>Statute</u>	
2016-00026727	5/6/2016	11360 (A)	11359
51774	5/6/2016	11357 (B)	
2016-00026996	5/7/2016	11359	
51878	5/10/2016	11357 (B)	
51797	5/12/2016	11357 (B)	
2016-00028471	5/14/2016	11357 (A)	
2016-00028542	5/15/2016	11360 (A)	11359
2016-00029227	5/18/2016	11359	
2016-00029442	5/19/2016	11360 (A)	11359
2016-00029445	5/19/2016	11360 (A)	11359
2016-00032614	6/3/2016	11359	
2016-00033018	6/4/2016	11357 (C)	11357 (A)
2016-00033461	6/6/2016	11357 (A)	
2016-00034088	6/9/2016	11360 (A)	11357 (B)
2016-00034088	6/9/2016	11357 (B)	
2016-00034100	6/9/2016	11357 (B)	
2016-00034173	6/9/2016	11357 (A)	

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

Demographic data for Jan-Jun 2016 activity

<u>Case/Citation Number</u>	<u>Date</u>	<u>HS Code Statute(s)</u>	<u>Arrestee Race</u>	<u>Gender</u>	<u>Age</u>
2016-00000187	01/01/2016	11359	Hispanic	Male	27
49912	01/09/2016	11357 (B)	White	Male	26
50091	01/09/2016	11357 (B)	White	Male	26
2016-00001955	01/11/2016	11359	Black	Male	17
2016-00002840	01/15/2016	11359	Black	Male	18
2016-00002840	01/15/2016	11359	Asian	Male	20
2016-00002840	01/15/2016	11359	Black	Male	20
49986	01/24/2016	11357 (B)	White	Male	21
50263	01/24/2016	11357 (B)	Black	Male	25
50122	01/29/2016	11357 (B)	Hispanic	Male	18
50074	01/30/2016	11357 (A)	White	Male	37
2016-00006466	02/02/2016	11357 (A)	Black	Male	34
2016-00006552	02/02/2016	11360 (A) 11359	White	Male	35
2016-00006563	02/02/2016	11359	White	Female	20
2016-00006569	02/02/2016	11360 (A) 11359	White	Male	26
2016-00006609	02/02/2016	11357 (A)	White	Male	25
50176	02/02/2016	11357 (B)	White	Male	33
2016-00009609	02/17/2016	11360 (A) 11359	Black	Male	55
2016-00009609	02/17/2016	11360 (A) 11359	Black	Male	25
2016-00009609	02/17/2016	11359	Black	Male	55
2016-00009609	02/17/2016	11359	Black	Male	25
2016-00011864	02/28/2016	11359	Other	Female	21
2016-00013351	03/06/2016	11357 (B)	White	Male	22
2016-00013469	03/07/2016	11359	Black	Male	19
2016-00013927	03/09/2016	11359	White	Male	51
2016-00015100	03/15/2016	11357 (A)	White	Female	40
2016-00016007	03/18/2016	11359	Black	Male	22
2016-00016052	03/18/2016	11359	White	Male	20
2016-00016108	03/20/2016	11359	Black	Male	35
50869	03/21/2016	11357 (B)	White	Male	49
2016-00017901	03/28/2016	11359	Black	Male	22
2016-00019322	04/03/2016	11360 (A) 11359	White	Male	41
2016-00019532	04/04/2016	11357 (A)	White	Male	64
2016-00019551	04/05/2016	11357 (A)	White	Male	30
2016-00020473	04/08/2016	11359	Black	Male	37
2016-00020709	04/09/2016	11357 (A)	White	Male	20
2016-00021576	04/13/2016	11357 (B)	White	Male	51
2016-00023318	04/21/2016	11357 (A)	White	Male	67
51375	04/22/2016	11357 (B)	Black	Male	21
51369	04/23/2016	11357 (B)	Black	Male	21
51732	04/27/2016	11357 (B)	Black	Male	46
2016-00025896	05/02/2016	11357 (B)	White	Male	53
2016-00026329	05/04/2016	11357 (A)	Asian	Male	31
51767	05/04/2016	11357 (B)	Black	Male	37
2016-00026719	05/06/2016	11359	Black	Male	29

2016-00026723	05/06/2016	11360 (A) 11359	Black	Male	20
2016-00026723	05/06/2016	11360 (A) 11359	Black	Male	18
2016-00026723	05/06/2016	11359	Black	Male	20
2016-00026723	05/06/2016	11359	Black	Male	18
2016-00026727	05/06/2016	11360 (A) 11359	Black	Male	18
2016-00026727	05/06/2016	11359	White	Male	21
2016-00026727	05/06/2016	11359	Black	Male	18
51774	05/06/2016	11357 (B)	White	Male	34
2016-00026996	05/07/2016	11359	White	Male	34
51878	05/10/2016	11357 (B)	Hispanic	Male	25
51797	05/12/2016	11357 (B)	Hispanic	Male	33
2016-00028471	05/14/2016	11357 (A)	Other	Male	20
2016-00028542	05/15/2016	11360 (A) 11359	Asian	Male	26
2016-00028542	05/15/2016	11360 (A) 11359	Asian	Male	22
2016-00028542	05/15/2016	11360 (A) 11359	Asian	Male	21
2016-00028542	05/15/2016	11360 (A) 11359	Other	Male	18
2016-00028542	05/15/2016	11359	Asian	Male	26
2016-00028542	05/15/2016	11359	Asian	Male	22
2016-00028542	05/15/2016	11359	Asian	Male	21
2016-00028542	05/15/2016	11359	Other	Male	18
2016-00029227	05/18/2016	11359	Hispanic	Male	48
2016-00029442	05/19/2016	11360 (A) 11359	Black	Male	18
2016-00029445	05/19/2016	11360 (A) 11359	White	Male	16
52519	05/28/2016	11357 (B)	Hispanic	Male	20
52520	05/28/2016	11357 (B)	Hispanic	Male	15
2016-00032614	06/03/2016	11359	Black	Male	25
2016-00033018	06/04/2016	11357 (C) 11357 (A)	White	Male	63
2016-00033461	06/06/2016	11357 (A)	White	Male	24
2016-00034088	06/09/2016	11360 (A) 11357 (B)	Black	Male	21
2016-00034088	06/09/2016	11357 (B)	Black	Female	32
2016-00034100	06/09/2016	11357 (B)	Black	Female	17
2016-00034173	06/09/2016	11357 (A)	White	Male	53
52389	06/24/2016	11357 (B)	White	Male	39



Office of the City Manager

COMMUNICATION No. 1741

January 21, 2014

To: Honorable Mayor and City Councilmembers

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, 2013 through December 31, 2013.

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.

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Case #2013-00037389	7/2/2013	11360 (a); 11359
Ticket #29000	7/6/2013	11357 (b)
Ticket #29002	7/6/2013	11357 (b)
Case #2013-00039133	7/10/2013	11357 (b)
Ticket #29227	7/10/2013	11357 (a)
Ticket #28792	7/11/2013	11357 (b)
Ticket #29228	7/11/2013	11357 (a)
Case #2013-00040302	7/15/2013	11359
Case #2013-00040380	7/16/2013	11359

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Ticket #29059	7/20/2013	11357 (a)
Case #2013-00042102	7/24/2013	11359
Ticket #28679	7/24/2013	11357 (b)
Case #2013-00042334	7/25/2013	11359
Ticket #28674	7/26/2013	11357 (b)
Ticket #28675	7/26/2013	11357 (a)
Ticket #28576	7/28/2013	11357 (b)
Ticket #28587	7/28/2013	11357 (b)
Ticket #29500	7/31/2013	11357 (a)
Case #2013-00043923	8/2/2013	11357 (a)
Ticket #29502	8/2/2013	11357 (a)
Ticket #29498	8/3/2013	11357 (a)
Case #2013-00045230	8/8/2013	11359
Ticket #29520	8/10/2013	11357 (a)
Ticket #29918	8/14/2013	11357 (a)
Case #2013-00047557	8/19/2013	11359
Case #2013-00047836	8/20/2013	11357 (b)
Ticket #29920	8/21/2013	11357 (a)
Case #2013-00048129	8/22/2013	11359
Case #2013-00049064	8/26/2013	11359
Case #2013-00049883	8/29/2013	11359
Case #2013-00051308	9/4/2013	11359
Case #2013-00051983	9/7/2013	11357 (b)
Case #2013-00052008	9/7/2013	11357 (b)
Case #2013-00052064	9/8/2013	11359
Case #2013-00052218	9/8/2013	11359
Case #2013-00053074	9/12/2013	11359
Ticket #29953	9/13/2013	11357 (a)
Case #2013-00054901	9/20/2013	11359
Case #2013-00055753	9/24/2013	11357 (a); 11359
Case #2013-00055753	9/24/2013	11357 (a); 11359
Case #2013-00056168	9/26/2013	11357 (b)
Case #2013-00056449	9/27/2013	11357 (a)
Case #2013-00056727	9/29/2013	11357 (b); 11357 (a)
Case #2013-00056818	9/29/2013	11357 (a)
Ticket #30356	9/30/2013	11357 (a)
Case #2013-00057236	10/1/2013	11357 (a)
Case #2013-00058270	10/5/2013	11359; 11358
Ticket #30573	10/6/2013	11357 (a)
Ticket #30507	10/7/2013	11357 (a)

<u>Ticket / Case Number</u>	<u>Date</u>	<u>Statute</u>
Ticket #30674	10/10/2013	11357 (b)
Case #2013-00059571	10/11/2013	11359
Case #2013-00060396	10/15/2013	11359; 11358
Case #2013-00060888	10/17/2013	11359
Case #2013-00061143	10/18/2013	11359
Case #2013-00062092	10/23/2013	11359
Case #2013-00064476	11/3/2013	11359
Case #2013-00064716	11/4/2013	11357 (b)
Case #2013-00065278	11/7/2013	11359
Case #2013-00066233	11/12/2013	11357 (a)
Case #2013-00068579	11/23/2013	11359
Case #2013-00070333	12/3/2013	11360 (a); 11359
Case #2013-00070333	12/3/2013	11360 (a); 11359
Case #2013-00074008	12/21/2013	11359
Case #2013-00075349	12/29/2013	11357 (a)
Case #2013-00075380	12/29/2013	11357 (c)
Case #2013-00075453	12/30/2013	11359

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

PRC Additional Information Request; Semi-Annual Marijuana Report

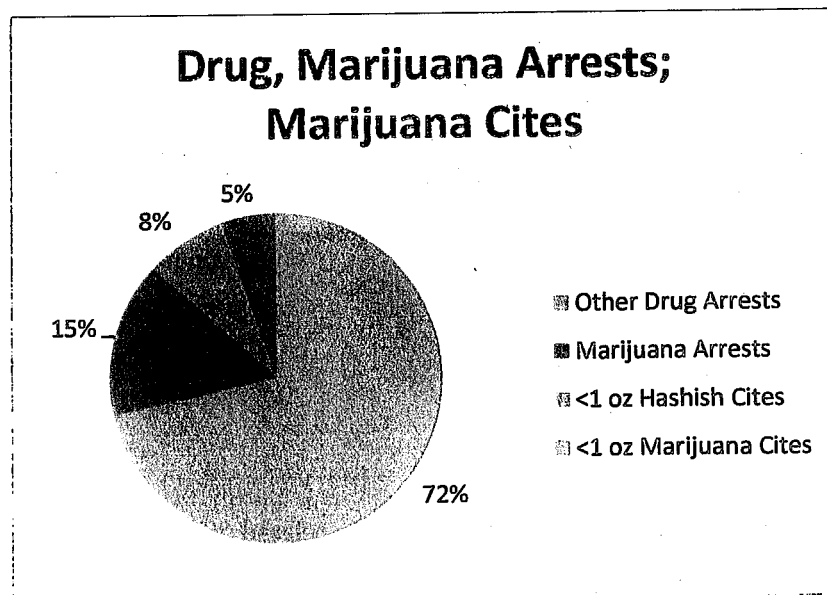
Semi-annually the Berkeley Police Department prepares a report that documents the total number of arrests and citations related to marijuana enforcement. In that report we specifically document those arrests and citations that document the following Health and Safety code sections:

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

In the PRC meeting on April 9, 2014 the PRC requested additional information regarding the Berkeley Police Department’s enforcement of marijuana laws. Below are information requests posed by Commissioner Sherman, in his April 18, 2014 letter to Chief Meehan. Our responses appear after each question below.

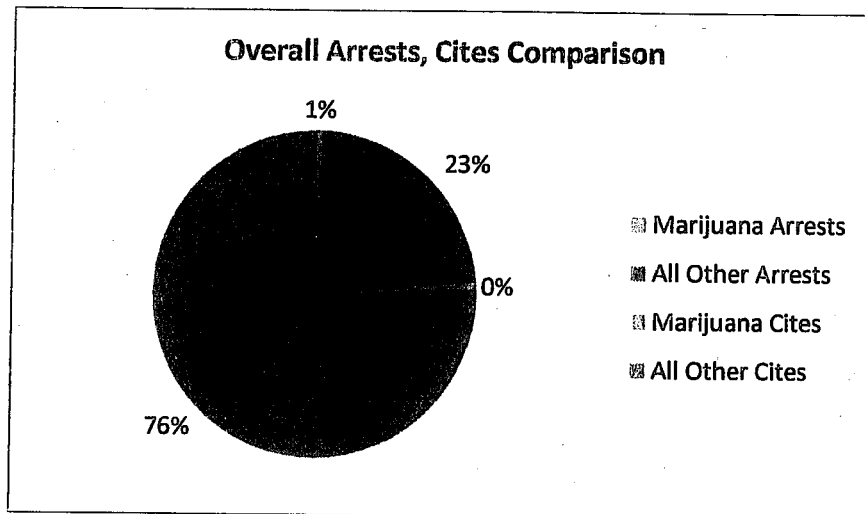
1. The total number of Narcotics arrests within the six month time period reflected in the report (July 1 – December 31, 2013).

Response: Our records show 284 total narcotics arrests during that period. Included in that total are 38 citations for either <1 oz. hashish or <1 oz. marijuana, 43 arrests for other marijuana offenses (e.g. possession for sale) and 203 arrests for other drugs¹.

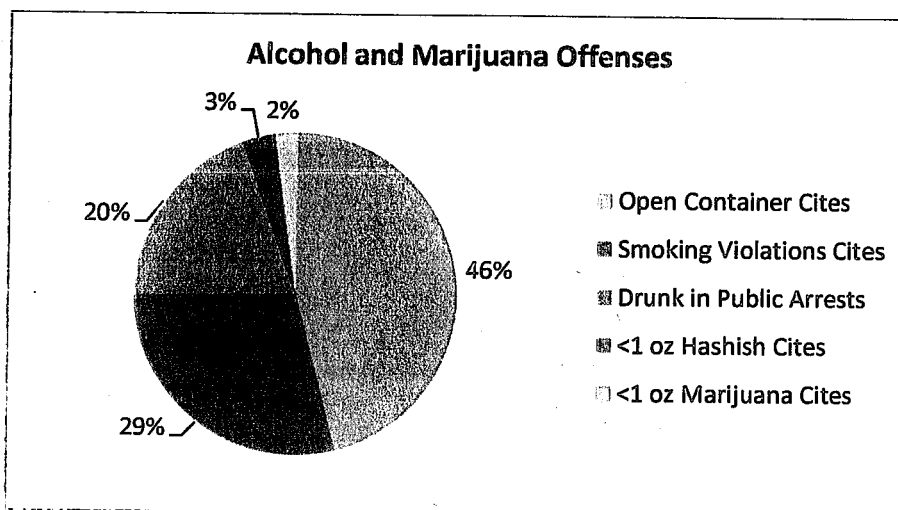


It may be helpful to consider the number of marijuana arrests and citations, compared with other arrests and citations during the same period. Our records show 4,610 citations issued. Of those, twenty three (.5%) were issued for <1oz of hashish, and fifteen (.3%) were issued for <1oz of marijuana. Therefore, of 4610 citations issued for the period, thirty eight (.8%) were marijuana cites.

Our records show 1,432 arrests made during the period. Of those, forty three (3 %) arrests were made for marijuana offenses. The chart below illustrates all citations and arrests, and breaks out marijuana related arrests and citations.



It may also be helpful to compare the number of citations and arrests related to alcohol, as compared to marijuana. The following chart shows 321 Open Container cites, 201 Tobacco cites, 138 "Drunk in Public" arrests, twenty three <1 oz hashish cites, and fifteen <1oz marijuana cites.



2. The total number of arrests involving only marijuana related offenses. For each of these arrests, the quantity of marijuana seized as noted in the police report.

Response: There were 20 cases that document charges for marijuana-*only* related offenses (Arrests only, not citations). Other than those statutes delineated in the semi-annual report, included are cases that also documented associated offenses of 1203.2 PC (Probation violation), 11364.1 H&S (Possession of drug paraphernalia), 647(f) PC (Public intoxication) and warrant arrests. See the attached spreadsheet for the list of these cases and the quantity of marijuana seized as noted in the police report. There are multiple lines in many cases representing multiple pieces of marijuana evidence associated with that case.

3. For each of the arrests involving only marijuana related offenses, the total number that were referred for prosecution to the District Attorneys' office, the outcome of each of these cases, and the total weight of marijuana in each case as identified by the criminalist.

Response: All 20 of the cases that involved arrests for only marijuana related offenses were referred to the District Attorney's office for prosecution. Thirteen were charged or resulted in probation revocation. Seven were not charged, or are unknown dispositions. Alameda County crime lab outcomes are not maintained directly in our records system's fields, and would therefore require case-by-case research.

4. For all arrests involving violations of Health and Safety Code section 11357(b), possession of less than an ounce of marijuana, a copy of the police report, redacted to exclude the name of the arrestee and the arresting officers.

Response: 11357 (b) offenses are typically documented through an infraction citation, without a formal report. Only two cases with narrative were located; both involved the arrests of juveniles.

5. The total number of arrests involving marijuana related offenses and additional offenses, with a listing of the additional charges.

Response: There were 28 cases that document the arrest of subjects for marijuana offenses as well as other crimes.ⁱⁱ

ⁱ The other drug-related offenses for which arrests were made are as follows:

- 11350(a) H&S - Possession of a narcotic / controlled substance.
- 11351 H&S - Possess or purchase for sale narcotics / controlled substance.
- 11351.5 H&S - Possess or purchase for sale cocaine base.
- 11352 H&S - Transport for sale a narcotic / controlled substance.
- 11366 H&S - Keep a place to sell a narcotic / controlled substance.
- 11370.1(a) H&S - Possess a controlled substance while armed.
- 11370.2(a)H&S - Enhancement of prison terms for prior drug convictions.
- 11375(b) H&S - Possess for sale / sell controlled substance.
- 11377(a) H&S - Possess a controlled substance.
- 11378 H&S - Possess a controlled substance for sale.
- 11379.6(a) H&S - Manufacture etc. a controlled substance.
- 4060 B&P - Possess a controlled substance without a prescription.

ii Other associated offenses included:

- 484e(d) PC - Use an access card without consent.
- 530.5(a) PC - Identity theft.
- 13.52.010 BMC - Trespassing.
- 148(a) PC - Obstruct or resist a police officer.
- 166(a) PC - Contempt of court.
- 11350(a) - Possession of a narcotic / controlled substance.
- 647(f) PC - Public intoxication.
- 381 PC - Possession of toluene.
- 3056 PC - Parole violation.
- 30305 PC - Prohibited person own or possess ammunition.
- 29900(a)PC - Illegally possess a firearm with a prior violent offense.
- 29800(a)PC - Felon or addict possess a firearm.
- 186.22(a)PC - Participate in a criminal street gang.
- 186.22(b)PC - Participate in a criminal street gang with other conviction.
- 1203.2 PC - Probation violation.
- 25850(a)PC - Carry a loaded firearm in public.
- 12022(a)(1) PC - Armed with a firearm in the commission of a felony.
- 1203.073(b)(5)PC - Possess over 14.25 grams of crack for sale.
- 22210 PC - Possession of a billy, blackjack, sandbag, sap or loaded cane.
- 11370.1(a) H&S - Possession of a controlled substance while armed with a firearm.
- 11351.5 H&S - Possession or purchase for sale cocaine base.
- 148.9(a) PC - False identification to police officers.
- 11364.1 H&S - Possession of drug paraphernalia.
- 11377(a) H&S - Possession of a controlled substance.
- 11378 H&S - Possession of a controlled substance for sale.
- 484e(c) PC - Sell, transfer, receive etc. access cards with the intent to defraud.
- 245(a)(1) PC - Assault with a deadly weapon other than a firearm.
- 242 PC - Battery.
- 211 PC - Robbery.
- 417(a)(1) PC - Exhibit a deadly weapon other than a firearm.
- 12022.1 PC - Felony committed while on bail.
- 496(a) PC - Possession of stolen property.
- 30605 PC - Possession of an assault weapon.
- 23900 PC - Tamper with the identification marks on a firearm.
- 273a(b) PC - Willful cruelty to a child causing injury or death.
- 11370.2(a) H&S - Enhancement for prior drug convictions.
- 33210 PC - Possess or sell a short barreled shotgun or rifle.
- 3455 PC - Violation of Post Release Community Supervision. (PRCS – prison realignment from AB 109)
- 21310 PC - Carry a concealed dirk or dagger.

Proposed PRC Meeting Dates 2017

January 2017

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

1-2: New Year's Day; NY Holiday
16: M L King Day

February 2017

S	M	T	W	T	F	S
5			1	2	3	4
6	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

13: Lincoln's Birthday Obs.
20: Washington's Birthday Obs.

March 2017

S	M	T	W	T	F	S
9			1	2	3	4
10	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2017

S	M	T	W	T	F	S
13						1
14	2	3	4	5	6	7
15	8	9	10	11	12	13
14	14	15	16	17	18	19
16	16	17	18	19	20	21
17	22	23	24	25	26	27
18	28	29	30			

May 2017

S	M	T	W	T	F	S
18	1	2	3	4	5	6
19	7	8	9	10	11	12
13	13	14	15	16	17	18
19	19	20	21	22	23	24
25	25	26	27			
28	28	29	30	31		

19: Malcolm X's Birthday Obs.
29: Memorial Day

June 2017

S	M	T	W	T	F	S
22			1	2	3	4
23	4	5	6	7	8	9
10	10	11	12	13	14	15
16	16	17	18	19	20	21
22	22	23	24	25	26	27
28	28	29	30			

July 2017

S	M	T	W	T	F	S
26						1
27	2	3	4	5	6	7
8	8	9	10	11	12	13
14	14	15	16	17	18	19
20	20	21	22	23	24	25
26	26	27	28	29	30	31

4: Independence Day

August 2017

S	M	T	W	T	F	S
31						1
32	2	3	4	5	6	7
8	8	9	10	11	12	13
14	14	15	16	17	18	19
20	20	21	22	23	24	25
26	26	27	28	29	30	31

No meetings this month

September 2017

S	M	T	W	T	F	S
35					1	2
36	3	4	5	6*	7	8
9	9	10	11	12	13	14
15	15	16	17	18	19	20
21	21	22	23	24	25	26
27	27	28	29	30		

4: Labor Day

6: *1st Wednesday; NACOLE conference Sept. 10 - 14

October 2017

S	M	T	W	T	F	S
40			1	2	3	4
41	5	6	7	8	9	10
11	11	12	13	14	15	16
17	17	18	19	20	21	22
23	23	24	25	26	27	28
29	29	30	31			

9: Indigenous People's Day

November 2017

S	M	T	W	T	F	S
44			1	2	3	4
45	5	6	7	8	9	10
11	11	12	13	14	15*	16
17	17	18	19	20	21	22
23	23	24	25	26	27	28
29	29	30				

10: Veterans' Day Observed

15: * 3rd Wednesday, for better spacing of meetings before /after
23-24: Thanksgiving + Day After

December 2017

S	M	T	W	T	F	S
48						1
49	2	3	4	5	6	7
8	8	9	10	11	12	13
14	14	15	16	17	18	19
20	20	21	22	23	24	25
26	26	27	28	29	30	31

25: Christmas Day

J. APPOINTMENT OF MEMBERS OF THE PUBLIC TO SUBCOMMITTEES

1. In accordance with the PRC Ordinance, the Chair may appoint members of the public to subcommittees in which they have expressed an interest, subject to approval of the commission. Members of the public seeking to serve on a subcommittee must: a) be residents of the City of Berkeley; and b) present themselves at a commission meeting before or at the time of the appointment and speak on the public record on intent to serve and what they will bring to the subcommittee work and deliberations.
2. Members of the public appointed to subcommittees shall enjoy the same voting rights and privileges on the subcommittee, as that of PRC commissioners appointed to the subcommittee, except that public members may not be selected to be the subcommittee Chair.
3. Commission members must constitute a majority of the membership of any subcommittee, but a subcommittee may convene and conduct business even if commissioners are not a majority of subcommittee members present
4. The term of appointment for members of the public appointed to subcommittees shall not exceed the life of the subcommittee. If a subcommittee must be reauthorized, any members of the public serving on the subcommittee must be reappointed by the Chair, subject to the approval of the commission.
5. A public member of a subcommittee who is absent from two consecutive subcommittee meetings is automatically removed from the subcommittee, but may be reinstated by the Chair if good cause for the absences is shown.
6. The Chair, subject to the approval of the commission, may remove a member of the public from a subcommittee for good cause. Examples of good cause are: failure to work cooperatively with subcommittee members; unruly or disruptive behavior at meetings; or failure to participate in the work of the subcommittee.
7. All actions by the Chair to appoint, reappoint, or remove a member of a public to or from a subcommittee shall occur at a commission meeting.

The Lexipol Primary Working Group (PWG) consists of the following members:

1. Lt. Dave Reece
2. Lt. Dan Montgomery
3. Lt. Mike Durbin
4. Sgt. Emily Murphy
5. Sgt. Spencer Fomby
6. Sgt. Joe Okies
7. Sgt. Peter Hong
8. Sgt. Dave Lindenau
9. Sgt. Sam Speelman

		Lexipol Policy	Expert Consulted	Edits? Y/N
1.	100	Law Enforcement Authority		
2.	101	Chief Executive Officer		
3.	102	Oath of Office		
4.	204	Electronic Mail		
5.	309	Officer Response to Calls		
6.	313	Adult Abuse	Peter Hong	
7.	318	Victim and Witness Assistance	Amber Phillips	
8.	319	Hate Crimes		
9.	320	Department Use of Social Media		
10.	323	Report Preparation		
11.	329	Major Incident Notification		
12.	330	Death Investigation	Peter Hong	
13.	333	Private Persons Arrest		
14.	401	Racial or Bias-Based Profiling		
15.	402	Briefing Training		
16.	408	Response to Bomb Calls	Brandon Smith	
17.	411	Cite and Release Policy		
18.	423	Watch Commanders		
19.	424	Mobile Data Terminal Use		
20.	426	Public Recording of Law Enforcement Activity		
21.	429	Foot Pursuit		
22.	504	Impaired Driving and Evidence Collection	Jen Tate	
23.	508	Crossing Guard		
24.	602	Asset Forfeiture	Scott Salas	
25.	800	Crime Analysis	Ryan Andersen	

The PWG has vetted the policies listed above. Please review and make any suggested edits on the actual document. Please return the binder to me by Friday 10/21/16. If no binder is received, it will be presumed that you agree with the policy. Please email or call with any questions!

Thanks!

Sgt. Sam Speelman

PRC Priority List

Updated November 10, 2016

Top Priorities	Notes
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee recommendations conditionally approved by full Commission 9.21.16; awaiting Commanders Guide.
Body-worn camera policy	PRC and BPD met 9.14.16 to see if policy differences can be reconciled. Next meeting 12.7.16.
Fair and Impartial Policing (includes policy review re race designation on traffic citations)	Subcommittee active.
Standard of proof in BOI hearings	On 9.14.16, authorized designated commissioner to draft letter to Council. On 12.14.16 agenda.
City Council directive of 1.26.16 to work with BPD on recommendations from reports re response to Dec. 2014 protests.	Items not referred to General Orders or Media Credentialing Subcommittees to be agendized.
Develop Ordinance on Surveillance and Community Safety	Subcommittee active.
Outreach – to explore effective ways of reaching target audience	Subcommittee formed 9.21.16.
Mutual Aid Pacts – annual review	Subcommittee active.
Media credentialing policy	Subcommittee active.

Pending items	
McKinley Ave. Staging – policy review	BPD to present revised G.O. U-4, Unusual Occurrences. (Per 4.13.16 meeting)
<i>G.O. W-1: Right to Watch</i>	<i>Revised GO W-1 based on Lexipol 426 approved with one change 11.9.16.</i>
Investigation into BPD response on Dec. 7 & 8, 2014	1) Letter to Chief with inquiries sent 8.22.16; 2) 2 issues referred to G.O. C-64 etc. Subcommittee.
Policy review re Smoking Control Ordinance	On 7.15.15, PRC authorized further action as memorialized in 8.7.15 letter from PRC Officer to Chief expressing concerns and making requests.
G.O. M-3: Monthly Management and Annual Reports	7.18.16 letter to CM and Chief re why reports not generated. CM on 8.1.16 said Chief to respond. 9.14.16 authorized request to Chief for his recommendations to M-3.

PRC Priority List

Updated November 10, 2016

Remaining items	
Information about ABC enforcement action by BPD and others in South Campus Fall 2016	To be agendized.
How BPD conducts police officer recruitment.	To be agendized.
Commissioner training on law and police procedures	Tactical de-escalation training presented 8.10.16. Additional training?
BPD acquisition of non-military armored vehicle	To be agendized.
Policy review: citations to bicyclists running red lights	Accepted policy complaint 10.14.15. (A. Bernstein would like to add "Idaho stop" issue.)
How to read CAD reports	PRC Officer item.
<i>Achieving agreement with BPD regarding consultation on all new and changes to G.O.s</i>	<i>On 11.9.16, Chief explained changeover to Lexipol; agreed to give PRC notice of policies in that process, as well as any change to existing policies.</i>
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item.

Pending from staff	
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff's memo on significant laws and court cases affecting PRC discussed at 10.26.16 meeting. Further discussion re applicability to BOI process agendized for 11.9.2016 (postponed) and 12.14.16.
<i>Obtain findings reports from other oversight agencies</i>	<i>Results of staff work distributed 10.17.16 and attached to 10.26.16 packet.</i>
Policy review: search of vehicle and person based on marijuana smell when driver is authorized user	Assigned to staff 10.13.16. In progress.

Prioritization of PRC requests to BPD

Date/form of request	Request	Status/Notes
GROUP I		
1.26.16 Council action	Council directive to PRC and BPD to work on recommendations following review of December 6, 2014 response	Most are being handled in G.O. C-64 etc. Subcommittee
12.9.15 oral	Center for Policing Equity analysis of stop data – when?	As of Sept. 2016, still unknown
3.31.16 letter	<i>Consider adopting SFPD G.O. 5.07, Rights of Onlookers, as the BPD's Right to Watch G.O.</i>	<i>11.10.16 Chief issued revised G.O. W-1, Public Recording of Law Enforcement Activity, approved by PR 11.9.16</i>
7.18.16 letter	General Order M-3, BPD reports to City Manager et al.: 1) Urge reporting to occur; 2) Discuss at meeting with CM 8.1.16	2) Discussed with Chief/CM: Chief to reply. (per 9.14 PRC action, further request to Chief forthcoming)
GROUP II		
12.9.15 oral	Analysis of new beat plan – when?	At 12.9.15 meeting, Chief said would be another 4 – 6 months.
1.5.16 letter	3 new ordinances to “improve conditions on community sidewalks”: any plan to issue G.O., T&I Bulletin, or Captain's Instructions?	
4.13.16 meeting	Provide Revised G.O. U-4, Unusual Occurrences, for review.	
8.22.16 letter	Respond to questions regarding BPD response on Dec. 7-8, 2014	
GROUP III		
8.27.15 letter	Smoking Ordinance/dissemination of info to officers re new ordinances.	At 12.9.15 meeting, PRC did not include in top 10 priorities.
1.13.16 oral	Cost analysis to carry out recommendations in Dec. 2014 post-incident review?	
10.13.16 Oral	Information about ABC enforcement action by BPD and other law enforcement agencies in South Campus Fall 2016.	At 10.26.16 meeting, PRC agreed to agenda when agenda is light.
10.13.16 Oral	How BPD conducts police officer recruitment.	

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 12-5-16**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Body-worn & Dash Cameras Formed 12-9-15	Lippman Roberts Yampolsky	Lippman	Lt. David Reece Sgt. Joseph Okies
General Orders on Crowd Control C-64, U-2, M-2 Formed 1-13-16	Bernstein Lippman	Bernstein	Capt. David Frankel Lt. Michael Durbin
Fair & Impartial Policing Formed 1-13-16	Lippman Roberts Smith <i>Public members:</i> Christina Murphy Paul Kealoha-Blake Elliot Halpern	Lippman	Lt. Michael Durbin
Media Credentialing Formed 1-13-16	Sherman Smith	Smith	
Mutual Aid Pacts Re-formed 7-13-16	Bernstein DaSilva Sherman		Capt. David Frankel
Surveillance and Community Safety Ordinance Formed 9-14-16	Bernstein DaSilva Yampolsky Roberts <i>Public members:</i> Tracy Rosenberg Brian Hofer Juliet Leftwich	Yampolsky	Lt. David Reece
Outreach Committee Formed 9-21-16	Bernstein DaSilva		

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 10, 2016

GENERAL ORDER W-1

SUBJECT: PUBLIC RECORDING OF LAW ENFORCEMENT ACTIVITY

PURPOSE AND SCOPE

- 1- This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this department. In addition, this policy provides guidelines for situations where the recordings may be evidence.

POLICY

- 2- The Berkeley Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.
- 3- Officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

RECORDING LAW ENFORCEMENT ACTIVITY

- 4- Members of the public who wish to observe and / or record law enforcement activities are limited only in certain aspects.
 - (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
 - (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
 1. Tampering with a witness or suspect.
 2. Inciting others to violate the law.
 3. Being so close to the activity as to present a clear safety hazard to the officers.
 4. Being so close to the activity as to interfere with an officer's effective communication with a suspect or witness.
 - (c) The individual may not present an undue safety risk to the officers, him/herself or others.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 10, 2016

GENERAL ORDER W-1

OFFICER RESPONSE

- 5- Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.
- 6- Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.
- 7- If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

SUPERVISOR RESPONSIBILITIES

- 8- A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior. The supervisor should review the situation with the officer and:
 - (a) Request any additional assistance as needed to ensure a safe environment.
 - (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.
 - (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
 - (d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
 - (e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

SEIZING RECORDINGS AS EVIDENCE

- 9- Officers should not seize recording devices or media unless (42 USC § 2000aa):
 - (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably

BERKELEY POLICE DEPARTMENT

DATE ISSUED: November 10, 2016

GENERAL ORDER W-1

necessary for prosecution of the person.

1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.
 2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a department-owned device.

Bulletin Notice

Date: November 28, 2016
To: All Employees
From: Andrew R. Greenwood, Int. Chief of Police
Subject: Promotions



As you may be aware, Ed Spiller is being promoted to the permanent position of Captain, effective December 4th.

As a result, the following promotions will go into effect, with precise dates to be determined, but likely within the next couple of weeks:

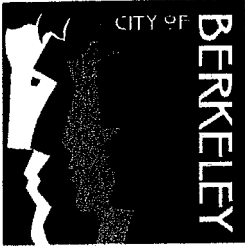
Sgt. Kevin Reece is being promoted to Lieutenant.

Ofc. Rosie Jung is being promoted to Sergeant.

Please join me in congratulating them in their new roles.

I anticipate making another round of promotions within the next 2-3 weeks; these will be provisional to cover a Captain, a Lieutenant, and a Sergeant position due to my appointment as Interim Chief.

An *additional* round of promotions may occur if we are able to move forward with a re-organization to include a 4th Captain's position. The timeline on that is undetermined, but we are working on it.



Police Review Commission (PRC)

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

**Wednesday, October 26, 2016
7:00 P.M.**

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

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:06 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts (Vice Chair)
Commissioner Kimberly DaSilva
Commissioner Jerry Javier
Commissioner George Lippman
Commissioner Michael Sherman
Commissioner Ari Yampolsky (arrived 7:25 p.m.)

Absent: Commissioners Alison Bernstein, Kad Smith.

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Mike Durbin, Sgt. Ben Cardoza, Sgt. Sean Ross

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There was 1 speaker.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 13, 2016

Moved/Seconded (Sherman/Lippman) Motion Carried

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman.

Noes: None **Abstain:** None **Absent:** Bernstein, Smith, Yampolsky

5. CHAIR'S REPORT

None.

6. PRC OFFICER'S REPORT

- Case deadlines report distributed. One new case filed since the last meeting.
- PRC Officer sat on interview panel for investigator for BART Office of Independent Auditor.
- Only one meeting next month, November 9.
- PRC Officer will be on vacation next week.

7. CHIEF OF POLICE'S REPORT

Lt. Durbin reported on behalf of Chief Greenwood:

- 168 sworn. Over 20 in background investigations. Chief interviewed 4 candidates last week and made 4 job offers to laterals. Focus still to hire the best and also achieve diversity; the four are Hispanic female; Hispanic male; Black female, White male.
- Increase in robberies in Northeast part of town last few weeks; uptick in auto burglaries in West.
- Crowd control training Nov. 3; the second group of three. Will have direct contact with trainers on that date and get immediate feedback on the new G.O. [C-64]. Not waiting for 3rd group before changes incorporated.
- Commander's Guide has gone to Frankel for distribution to Command staff; they'll have a week from tomorrow to review; and then give feedback. PRC will have input before finalized.
- CPE report from Chief Greenwood: CPE has our stop data and related policies, but has not yet written our report. Most of their energies went into recently-completed Austin PD stop data report, which is available for viewing on the internet; search for White House data initiative and Austin PD report. Gives you an idea what our report will look like. CPE unable to give a time frame.
- Chief Greenwood will be forwarding 5 years of use-of-force data for CPE to analyze.

8. OLD BUSINESS (discussion & action)

- a. Status of General Order W-1, Right to Watch.
(Item postponed to the next meeting to include consideration of Lexipol Policy 426.)
- b. Review draft of response to City Manager's September 12, 2016 letter regarding the standard of proof used in BOI hearings.
(Item postponed to the next meeting.)
- c. Policy regarding publication of communications from the public to the PRC – continue discussion on form and content of reporting of informal and formal complaints to Commission.

Motion to accept the proposal of the PRC officer as set forth in her memo of October 21, 2016, and that, as to the quarterly digest of formal

complaints to be discussed confidentially in closed session, commissioners should see subject officer's names.

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

Ayes: Javier, Lippman, Roberts, Sherman, and Yampolsky.

Noes: DaSilva, Perezvelez Abstain: None Absent: Bernstein, Smith

Motion to ask the PRC officer to look into the advisability of furnishing members of a BOI with a subject officer's appearance at prior BOIs and the outcome, if any.

Moved/Seconded (Yampolsky/Javier) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, and Yampolsky.

Noes: Perezvelez, Roberts, Sherman Abstain: None

Absent: Bernstein, Smith

- d. Review of BPD marijuana enforcement report.
(Item postponed to the next meeting.)

- e. Certificate of appreciation for former Chief Meehan

Motion to accept the recommended wording of a certificate of recognition for former Chief Meehan, and to authorize the PRC staff to format and frame the certificate, and send it to him.

Moved/Seconded (Sherman/Roberts) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Yampolsky.

Noes: None Abstain: None Absent: Bernstein, Smith

- f. Proposed changes to Standing Rules regarding procedures for election of PRC Chair and Vice-Chair

Motion to amend the standing rules by approving the proposal appearing as agenda item #8.f., with the following three amendments to Sections 2. g):

The presiding Chair calls for a roll vote and then announces the winner, except in the following circumstances:

- i. **If there is only one nominee for a position, the presiding Chair will may seek or move a vote by acclamation.**
- ii. **If a tie occurs among nominees, the presiding Chair will conduct a second round of balloting voting, and possible including any additional nominations.**
- iii. **If a clear winner is still not identified after a second round of voting, the Presiding Chair will conduct a coin toss to break the tie and determine a winner. The PRC Secretary will assign "heads" and "tails."**

Moved/Seconded (Roberts/Sherman) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Yampolsky.

Noes: None Abstain: None Absent: Bernstein, Smith

- g. Commission's list of tasks and prioritization.

By general consent, the Commission agreed to make the issue of ABC enforcement in the South Campus area a Group III priority, to be discussed when the agenda is less full, and to make the subject of BPD's recruitment efforts a Group III priority unless a commissioner wishes to move it up. PRC Officer has a plan to work with BPD staff on the policy review on searches of vehicles and persons based on odor of marijuana, so no need to prioritize.

9. NEW BUSINESS (discussion & action)

- a. Review of handout on significant laws and court cases affecting scope and powers of the Berkeley PRC; discussion of applicability to aspects of the BOI process.

(Discussion to be continued at next meeting.)

- b. Commendations of BPD personnel January through June 2016.

(Item postponed to the next meeting.)

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. General Orders C-64, etc. Subcommittee

No action.

- b. Fair & Impartial Policing Subcommittee

Report given.

Motion to approve the Subcommittee's outreach letter, as amended.

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

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Yampolsky.

Noes: None

Abstain: None

Absent: Bernstein, Smith

- c. Mutual Aid Pacts Subcommittee

Report given.

- d. Media Credentialing Subcommittee

PRC Officer to schedule meeting.

- e. Surveillance and Community Safety Ordinance Subcommittee

Report given. Next meeting November 2.

- f. Outreach Subcommittee

No action.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There was one speaker.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matters:

13. REVIEW OF CALOCA DECISION

Complaint #2380

(Item postponed to the next meeting.)

End of Closed Session

14. ADJOURNMENT

By general consent, the meeting was adjourned at 10:04 p.m.

George D. Perezvelez

667 Vistamont Avenue • Berkeley, CA, 94708 • Phone: 415-994-3234
E-Mail: georgeperezvelez@gmail.com

Date: December 4, 2016

Dear Fellow Commissioners,

It is with great regret but with a deep and heartfelt sense of gratitude that I must officially resign my position as a member of the Police Review Commission. This resignation is effective November 30th, 2016.

When I first joined the commission almost ten years ago, my interest was to serve the great City of Berkeley. A community we travelled all the way from Atlanta to be part of and one that welcomed us with open arms.

I had the distinct pleasure of meeting Mayor Bates and he gracefully accepted my application and appointed me. Mayor Bates only had very simple but straight-forward instructions for me. Be impartial, balanced and fair and serve with distinction. That was the last time Mayor Bates ever approached me. He never asked me about a vote, decision or an agenda item or counseled me on how to perform my duties.

This thorough level of respect is relevant as all commissioners must be able to use their own moral and ethical compass when serving the City of Berkeley as duly appointed public servants. Undue influence by any outside source does not only dilute the ability for commissioners to be impartial but undermines the process and the contract we have with our fellow citizens and the Department. I am not only grateful for the trust placed in me by Mayor Bates but also the great respect and belief he had in the process.

During my ten-year tenure, I had the distinct pleasure of serving as either the Chair or the Vice Chair 8 separate times. I have met countless committed members of our community that selfishly engaged in the necessary work in order to make our streets safe and our department the best that it can be. I have also met deeply committed Police officers that believe in public safety and protecting the city and community they serve.

I have found the work to be rewarding and the relationships everlasting. It has given me a broader outlook on the need for our first responders and public safety officers to be responsive to the community they serve as well as the innate responsibility we all have to ensure they have the necessary tools and support in order to efficiently, professionally and responsibly perform their duties.

The work of oversight is extremely relevant and of the utmost importance to our community. Police oversight must be looked upon as a tool for growth, development and shared responsibility. The commission must continue to not only move a fair and balanced agenda forward but it must also strengthen the necessary bridges critical to a successful relationship with the Berkeley Police Department.

I leave the oversight process in great hands. I wish you all Godspeed, health and continued success with our vital work.

Respectfully,

George D. Perezvelez
Chairman, Berkeley Police review Commission

Vacant seats: 0
(as of October 31, 2016)

Commission: Police Review Commission

Commission Secretary: Katherine Lee

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length	Tele-Conference?***
11/18/15		5 of 8	?	0	3.2	
12/9/15		6 of 9	?	1	2.9	
1/13/16		6 of 9	6	3	3.1	
1/27/16		9 of 9	4	3	2.8	
2/10/16		8 of 9	6	4	2.9	
2/24/16		6 of 9	8	8	2.3	
3/9/16		8 of 9	7	5	3	
3/23/16		7 of 9	6	6	2.8	
4/13/16		7 of 9	6	3	3.2	
4/27/16		8 of 9	3	1	1.6	
5/11/16		9 of 9	9	4	2.5	
5/25/16		6 of 9	10	7	2.9	
6/8/16		7 of 9	3	1	2.8	
7/13/16		8 of 9	8	5	3.4	
7/27/16		8 of 9	6	3	3.2	
9/14/16		8 of 9	9	5	3.5	
9/21/16		9 of 9	6	2	3.2	
10/13/16		6 of 9	3	1	3.3	
10/26/16		7 of 9	6	1	3	
11/9/16		7 of 8	2	0	2.5	

***Please indicate with a "Yes" or "No" whether or not any commissioners participated in the meeting via teleconference. If "Yes," please note how many commissioners participated via teleconference.

