

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, March 23, 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 March 9, 2016
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
Status of complaints; announcements.
- 7. CHIEF OF POLICE'S REPORT**
Budget, staffing, training updates, and other items.
- 8. OLD BUSINESS (discussion & action)**
 - a. Policy complaint: McKinley Avenue staging: BPD presentation of new general order on staging practices; consider closure of complaint.
 - b. Implementation of Council directive regarding PRC and BPD recommendations following BPD response to December 6, 2014 protests: consideration of recommendations #1, #14, #15, #28, #31, and #32.
 - c. Review of revised General Order W-1 (Right to Watch) proposed by BPD.
 - d. Senate Bill 1286, Increasing Law Enforcement Transparency bill.
(See materials attached to March 9, 2016 agenda)

- e. Reports from BPD under General Order C-1, Intelligence Procedures for First Amendment Activities.
(See materials attached to March 9, 2016 agenda)
- f. Possible dates and structure of meeting regarding Liberty City.

9. NEW BUSINESS (discussion & action)

- a. Accept agreed-upon changes to Regulations signed by the Deputy City Manager and the BPA President.
(To be delivered.)
- b. Consider participating in the Berkeley Juneteenth Festival on Sunday, June 19, 2016.

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. Body-Worn and Dash Cameras Subcommittee
Update; schedule next meeting date
- b. General Orders C-64, etc. Subcommittee
Update; schedule next meeting date
- c. December 7 & 8 Investigation Subcommittee
Update; schedule next meeting date
- d. Transgender G.O. Subcommittee
Update; schedule next 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.)

13. 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.

PRC REGULAR MEETING ATTACHMENTS

March 23, 2016

MINUTES

March 9, 2016 *Regular Meeting* Page 7

AGENDA RELATED

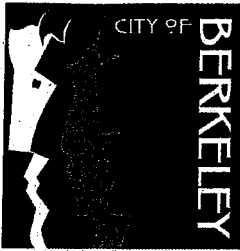
Item 8.b –PRC and BPD recommendations following BPD response to December 6, 2014: #1, #14, #15, #28, #31, and #32. Page 11

Item 8.c –Draft Revised General Order W-1 (Right to Watch) proposed by BPD; July 21, 2015 G.W. W-1; Training & Information Bulletin #91. Page 13

Item 9.b. – Announcement re the Berkeley Juneteenth Festival on Sunday, June 19, 2016. Page 19

COMMUNICATIONS

- BPD Use of Pepper Spray Report, dated February 6, 2016. Page 21
- Email from Peter Haberfeld, dated March 2, 2016 re PRC complaint. Page 23
- Email from Wingyin Wong, dated March 2, 2016 and Action Item to the Mayor and members of the Council re Commission Process Improvement. Page 25
- Letter from PRC Officer to the Police Chief, dated March 16, 2016 re Status of two post-incident review recommendations. Page 31
- PRC Priority List, updated March 17, 2016. Page 33
- PRC requests to BPD, updated March 17, 2016. Page 35



Police Review Commission (PRC)

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

**Wednesday, March 9, 2016
7:00 p.m.**

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

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:07 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts (Vice Chair)
Commissioner Alison Bernstein
Commissioner Jerry Javier
Commissioner George Lippman
Commissioner Michael Sherman
Commissioner Ayelet Waldman
Commissioner Ari Yampolsky

Absent: Commissioner Kad Smith

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan (left 8:12 p.m.), Capt. Dave Frankel (left 8:12 p.m.), Lt. Dan Montgomery, Sgt. Todd Sabins, Sgt. Benjamin Cardoza (arrived 8:12)

2. APPROVAL OF AGENDA

With the deletion of Item #10.c., the agenda was approved by general consent.

3. PUBLIC COMMENT

There were 4 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting minutes of February 24, 2016

Moved/Seconded (Waldman/Yampolsky) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Sherman, Waldman, and Yampolsky.

Noes: None

Abstain: None

Absent: Smith

5. CHAIR'S REPORT

None

6. PRC OFFICER'S REPORT

- One new complaint filed since last meeting.
- PRC's prior request to ask for City Attorney opinion on how blocking the sidewalk is enforced for purposes of Penal Code section 647(e), is not the right question and will therefore not be asked.
- Save the date for Juneteenth celebration, June 19; will agendaize for the next meeting PRC having a booth.
- HHCS would like July 12 Council Work Session date because it has a conflict on July 19; okay to move PRC Body-Worn Camera Work Session to July 19? (Commission said yes.)
- The City and BPA are very close to agreement on the proposed Regulations changes.

7. CHIEF OF POLICE'S REPORT

(No report other than crime report prepared for today.)

Questions:

- Can PRA requests be made of BPD via email? How about a dedicated address? Yes, BPD does accept email requests. Website needs to be updated. Will look into a specific address for such purposes.
- Why isn't BPD a co-sponsor of the NOBLE (National Organization of Black Law Enforcement Executives) Forum on 21st Century Policing? BPD reps are participating but BPD not made aware of opportunity to sponsor ahead of time.

8. 2015 CRIME REPORT

Presentation by Berkeley Police Department

Chief Meehan and Capt. Frankel made a presentation, and then answered questions from Commissioners.

9. OLD BUSINESS (discussion & action)

- a. Implementation of Council directive regarding PRC and BPD recommendations following BPD response to December 6, 2014 protests: consideration of recommendations not being addressed by General Orders Subcommittee.

By general consent, the Commission asked the PRC officer write to the Chief asking about the status of Recommendations #4 and #32 [of the BPD post- December 6, 2014 review] and whether there is anything the PRC can do to assist.

By general consent, the Commission agendaized for the next PRC meeting the remaining Recommendations not being addressed by the General Orders or media Credentialing Subcommittee -- #1, #14, #15, #28, #31, #32.

- b. Chief's consideration of sustained allegations in a PRC Board of Inquiry, and relationship to discipline imposed following Internal Affairs investigation of the same incident.

Motion that the PRC Officer, Commissioner Waldman, and Commissioner Perezvelez work together on a letter to the City Manager requesting that the City Manager direct the Chief to consider PRC findings whenever possible; that we redraft the Regulations to allow for our timeline to be truncated to reach findings within 100 days, and ask the City Manager that to the extent the new regulations are subject to meet-and-confer to have as a priority the efficacious resolution of that process; and inform the City Manager Chair and Vice-Chair are available to meet with her.

Moved/Seconded (Bernstein/Waldman)

Friendly amendment: that the actual wording of the letter captures the spirit of the motion.

Moved by Perezvelez; Accepted by Bernstein and Waldman)

Motion, as amended, carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Sherman, Waldman, and Yampolsky.

Noes: None

Abstain: None

Absent: Smith

- c. Review of revised General Order W-1 (Right to Watch) proposed by BPD. After discussion, the Commission agreed to continue discussion by re-agendizing this item for next meeting.
- d. Structure of special meeting regarding Liberty City.

Motion to invite BPD Capt. Greenwood and Liberty City Organizers to each make 20-minute presentations about Liberty City, reminding them that the focus is the actions of the BPD.

Moved/Seconded (Bernstein/Perezvelez) **Motion Carried**

Ayes: Bernstein, Javier, Lippman, Perezvelez, Roberts, Sherman, Waldman, and Yampolsky.

Noes: None

Abstain: None

Absent: Smith

10. NEW BUSINESS (discussion & action)

(All New Business was postponed until the next meeting.)

- a. Senate Bill 1286, Increasing Law Enforcement Transparency bill.
- b. Reports from BPD under General Order C-1, Intelligence Procedures for First Amendment Activities.

11. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

(All Subcommittee Reports were postponed until the next meeting.)

- a. Body-Worn and Dash Cameras Subcommittee
Update; schedule next meeting date
- b. General Orders C-64, etc. Subcommittee
Update; schedule next meeting date
- c. December 7 & 8 Investigation Subcommittee
Next meeting date March 10, 2016, at 5:30 p.m.

- d. Transgender G.O. Subcommittee
Update; schedule next meeting date

12. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

13. PUBLIC COMMENT

There was one speaker.

Closed Session

14. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Motion to reject staff's recommendation to administratively close complaint #2390.

Moved/Seconded (Bernstein/Lippman) Motion Carried

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

Noes: Perezvelez, Roberts **Abstain:** Waldman **Absent:** Smith

15. VOTE ON WHETHER TO ACCEPT LATE-FILED COMPLAINT

By general consent, the Commission determined that Complaint #2392 was timely filed.

End of Closed Session

16. ANNOUNCEMENT OF CLOSED SESSION VOTES

The votes above were announced.

17. ADJOURNMENT

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

BPD AND PRC RECOMMENDATIONS FOLLOWING REVIEW/INVESTIGATION OF BPD RESPONSE DEC. 6, 2014
ITEMS NOT BEING HANDLED BY GENERAL ORDERS OR MEDIA CREDENTIALING SUBCOMMITTEES
 (PRC recommendations edited for length)

Communication

Notes	BPD	PRC
BPD task.	<p>Recommendation #1 We recommend the Department get clarity on the availability of regional radio interoperability for common encrypted radio channels to improve communications with mutual aid partners during large scale events.</p>	<p>BPD should investigate the availability of regional radio interoperability for common tactical and recorded radio channels to improve communications with mutual aid partners during large scale events; BPD should communicate directly with EBRCS and ask for a speedy resolution to these questions and any necessary training.</p>

Situational Awareness

BPD task.	<p>Recommendation #14 Explore technology that can improve the quality and timeliness of information available to decision makers.</p>	<p>Before BPD implements the use of any additional surveillance and data gathering technology, the use of that technology shall be brought to PRC and the City Council for approval.</p>
Policy issue	<p>Recommendation #15 Consider proposing changes to the City Council Resolution 51,408-N.S., to permit the use of helicopters in instances of significant civil unrest.</p>	<p>The PRC recommends that the current City policy regarding the use of helicopters should be retained.</p>

Training

Notes	BPD	PRC
BPD done; PRC to review	<p>Recommendation #28 We recommend the creation of a document on BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner.</p>	<p>The PRC should work in collaboration with BPD to develop a website and other informational materials to inform the public about the BPD's approach to protests, ground rules for them, and details of the warning and dispersal system.</p>

Equipment

Notes	BPD	PRC
BPD has purchased new video cameras. Info-gathering for request to Council?	<p>Recommendation #31 We recommend the Department invest in quality video cameras, live stream capability and video capture software to improve situational awareness.</p>	<p>BPD needs to make better-informed decisions in crowd control situations; therefore, BPD needs access to real time surveillance tools. Gathering such information will require some degree of surveillance, which raises concerns regarding civilians' privacy. We recommend that the Council make a determination of what, if any, surveillance tools should be considered for use, and then refer the matter to the PRC to obtain community input and work with the BPD to establish the appropriate guidelines for such use.</p>
Agreement – BPD to do	<p>Recommendation #32 The Department should investigate the use of body armor to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.</p>	<p>The PRC endorsed BPD's Recommendation #32 as written.</p>

BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER W-01

Draft

SUBJECT: THE RIGHT TO WATCH

PURPOSE

- 1 - The purpose of this Order is to adopt policies and procedures regarding citizen's right to observe, photograph or video record officers during the course of their public duties.

POLICY

- 2 - It shall be the policy of this Department to set the least possible restriction on public observation, photographing or video recording of police officer's performing their duties.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting onlookers to withdraw only to those instances where a threat to safety is involved.

PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the behavior of officers. These persons also have the right to communicate with the detained person, provided, however:
 - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
 - b. that the observer's actions do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's investigation. An officer may instruct an observer to maintain a safe distance from the scene.
 - c. that the confidentiality of the matter being discussed with a suspect/victim/witness is not compromised except with concurrence of the citizen and the officer involved.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 21, 2015

GENERAL ORDER W-01

SUBJECT: THE RIGHT TO WATCH

PURPOSE

- 1 - The purpose of this General Order is to adopt policies and procedures regarding a citizen's right to observe, photograph or video record officers during the course of the officers' public duties.

POLICY

- 2 - It shall be the policy of the Berkeley Police Department to ^{set the least possible restriction} minimize restrictions on public observation, photographing or video recording of police officers' performance of their duties, while ensuring the safety of the public and the officers.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the ^{behavior of} officers from a safe distance. Citizens also have the right to communicate with the detained person, provided, however:
 - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
 - b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's attention. An officer may instruct an observer to maintain a safe distance from the scene, with the understanding that what constitutes a "safe" distance may vary depending on the circumstances.
 - c. that the confidentiality of the matter being discussed with a suspect, victim, witness, or reporting party is not compromised except with concurrence of the citizen and the officer involved.

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: August 23, 1983

NUMBER: 91

SUBJECT: THE RIGHT TO WATCH

At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe the behavior of officers. These persons also have the right to communicate with the detained person, provided, however:

- that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any public officer engaged in the duties of his/her office.
- that the observer's actions do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's investigation.
- that the confidentiality of the matter being discussed with a suspect/victim/witness is not compromised except with concurrence of the citizen and the officer involved.

It is Departmental policy to set the least possible restriction on public observation of police officer conduct.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously officers should restrict the practice of requesting onlookers to withdraw only to those instances where a threat to safety is involved.

RONALD D. NELSON
Chief of Police

About Juneteenth

The Emancipation Proclamation signed by President Lincoln on January 1, 1863, freed slaves from southern states in rebellion against the United States during the Civil War. News of the signing did not reach Galveston, Texas until June 19, 1865. On June 19th (shortened to JUNETEENTH), slaves flooded the streets, rejoicing in their newly discovered freedom. Barbecue smoke filled the air! Dancing feet pounded the ground and voices sung out. This day, JUNETEENTH, would forever commemorate African American freedom!

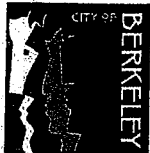
President Lincoln, had no legal power to single-handedly terminate the institution of slavery. Congress proposed the 13th Amendment to the Constitution, abolishing slavery, on February 1, 1865, and ratified it on December 6, 1865.

Communities nationwide have adopted JUNETEENTH as an occasion to celebrate African American culture and traditions, and as an opportunity to acknowledge contributions African Americans have made to the fabric of America. Cultural events like JUNETEENTH, celebrate diversity, and unify our nation when we all celebrate together.

**Sunday, June 19, 2016
11 am to 7 pm**

The Berkeley Juneteenth Festival, held annually in June in south Berkeley's five-block Alcatraz-Adeline corridor, is produced by **Berkeley Juneteenth Association, Inc. (BJAI)**, a non profit organized in 1987, whose mission is:

"To promote greater societal growth and community cohesiveness in the City of Berkeley and surrounding environs through educating and involving people of color in historical, family, economic, business, and cultural activities."



BERKELEY POLICE DEPARTMENT USE OF PEPPER SPRAY REPORT



(Note – this is a public document)

This report is to be completed by any Department employee who use "Oleoresin Capsicum" OC spray during the performance of his or her duties. The authorization for this report comes from City of Berkeley Council action taken September 16, 1997, directing that any use of "OC" be reported to the City council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Date: February 6, 2016
Date of Pepper Spray Report

From: Officer Hogan
Note: This form is to be completed by the Department employee using the spray. If that person is unable to complete this form due to injury, it shall be completed by his or her immediate supervisor.

Case Number(s): 16-7440

Incident Date: ~~February 16, 2016~~ *2-6-16 JH*

Incident Time: 2302 hours

Incident Location: Woolsey St/Telegraph Ave

Application was: Effective Ineffective

Subject: Adult Juvenile

Subject description:	<u>M</u>	<u>5'6"</u>	<u>220</u>
	Sex	Height	Weight

First Aid for Subject: Paramedic responded and administered First Aid Yes No

Additional comments on First Aid rendered: BFD responded to the sally port and flushed Hudson's face and eyes.

Nature of Incident:

Deshon Hudson was arrested for domestic violence and resisted officers during the handcuffing process. In effort to bring an escalating violent situation to an end, the subject was sprayed with OC.

RECEIVED



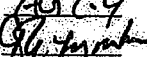

MAR 01 2016

OFFICE OF THE CHIEF

Summary and justification of the Actions of Officer(s) Involved:

Hudson was arrested for domestic violence and during the handcuffing process he resisted officers efforts to handcuff him. Hudson was taken to the ground where he was attempting to over power officers by lifting his torso and lower body from the ground. With officers on either sides of him, Hudson was tensing his body and attempting to stand back to his feet. Hudson ignored verbal commands and pain compliance. Due to the his size, strength and the amount of resistance he was displaying, I deployed one burst of my O.C Spray which had little to no effect. Soon after, Officers were able overcome Hudson's resistance and place his arms behind his back, handcuff him and place him in a wrap restraint system.

Please print and route through Chain of Command to the Office of the Chief.





3-2-16

Duty Supervisor
Watch Commander
Operations Captain
Chief of Police

Lee, Katherine

From: Peter <phaberfeld@hotmail.com>
Sent: Wednesday, March 02, 2016 2:43 PM
To: Lee, Katherine
Subject: RE: PRC Complaint form and late-file form

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Lee:

I want to thank you again for sending me the proper forms for filing a Complaint with your Commission. I used those forms and presented them to the victims of the police activity, but they were unwilling to consider signing the papers. Three of them declined because the charges arising from the incident have not yet been resolved. The fourth young man is on probation and fears retaliation by the police. As you may be aware, the law allows the police to search the person and home of someone on probation whenever they want.

In my opinion, the 90 day Statute of Limitations will prevent most defendants from filing complaints before their criminal charges are resolved. Lawyers typically advise against filing a citizen complaint in that situation. It is rare that resolution occurs within that time period. The 90 day rule thereby discriminates against those defendants who contest the charges brought by the police against them.

Additionally, preventing a member of the public from bringing police misconduct to the attention of your Commission bars them from performing a watchdog function in the City. It also further establishes the police department as the autonomous arbiter of what citizen behavior is improper and may be discouraged by police violence and/or arrest. The use of PC 148 "obstructing, delaying and/or interfering with an officer performing lawful duties" is a vaguely written offense that invites police to use their subjective judgment of what is proper and what is not. Public observers are necessary to assert the community's standards and limit the activity of persons who are armed and trained to use violence against unarmed members of the community.

I encourage the commission to propose amending the ordinance to allow members of the public to bring actions before it so that incidents that upset members of the public will not be ignored.

Sincerely,

Peter Haberfeld

From: KLee@ci.berkeley.ca.us
To: phaberfeld@hotmail.com
Subject: PRC Complaint form and late-file form
Date: Fri, 26 Feb 2016 01:09:18 +0000

Dear Mr. Haberfeld,

As promised during our recent phone conversation, I am attaching a complaint form and a late-file form for use in filing a complaint with the Berkeley Police Review Commission.

I should also point out that, for late-filed complaints, the subject officers are not required to appear before a Board of Inquiry, and the Board's findings will not be considered in any disciplinary actions by the City Manager or Police Chief. The potential complainants might want to take this into consideration as they decide whether they wish to proceed with a complaint.

I found the complaint form to be used for filing with the Open Government Commission here:

[http://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission on Fair Campaign Practices/Complaint%20form%20OGO.pdf](http://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission%20on%20Fair%20Campaign%20Practices/Complaint%20form%20OGO.pdf)

Actually, the PRC forms are online as well. You may wish to peruse our website for more information on our complaint process.

[http://www.cityofberkeley.info/Police Review Commission/Home/Complaints.aspx](http://www.cityofberkeley.info/Police%20Review%20Commission/Home/Complaints.aspx)

Sincerely,
Kathy

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

Lee, Katherine

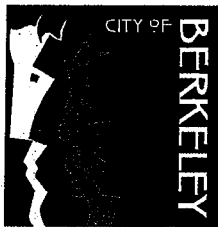
From: Wong, Wingyin
Sent: Wednesday, March 02, 2016 10:38 AM
To: Al-Hadithy, Nabil; Allen, Shannon; Amoroso, Alexander; Brannigan, David; Brenman, Eric; Bryant, Ginsi; Burns, Anne M; Bustamante, Tanya; Davidson, Amy; DeSnoo, Neal; Funghi, Amelia; Geiken, Delfina M.; Greene, Elizabeth; Hollander, Eleanor; Iyengar, Savith; Javandel, Farid; Klatt, Karen; Klein, Jordan; Lee, Katherine; Merker, Mary Ann; Miller, Roger; Molina, Raquel P.; Pollard, Beth; Powell, Greg; PRC (Police Review Commission); Ramirez, Manuel; Rejwan, Carmella; Reynoso, Sarah; Rose, Sean; Schneider, Andrew; Talley, Leah; Torres, Jonathan; Tsering, Dechen; Wicker, Andrew; Wong, Wingyin; Zarnowitz, Sally
Cc: Lee, Kristen S.
Subject: Report from HWCAC
Attachments: Commission improvement policy.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Hi Commission Secretaries,
My name is Wing and I am the secretary for the Human Welfare and Community Action Commission (HWCAC). Our commissioners find that the current Berkeley Municipal Code regarding the operations of the city commissions is unclear in several areas and therefore, has submitted a report and a resolution to amend this Municipal Code. Attached is the report/resolution for your commission to review.
Thank you.

Wing Wong
City of Berkeley
Department of Health, Housing & Community Services
Phone: (510) 981-5428
Fax: (510) 981-5450
wywong@cityofberkeley.info

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Human Welfare and Community Action Commission

ACTION CALENDAR
April 26, 2016

To: Honorable Mayor and Members of the City Council
From: Human Welfare and Community Action Commission
Submitted by: Praveen Sood, Chairperson, Human Welfare and Community Action Commission
Subject: Commission Process Improvement

RECOMMENDATION

Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley municipal that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

FISCAL IMPACTS OF RECOMMENDATION

There are minimal costs associated with the actions recommended beyond amending the policy as appears in city publications.

CURRENT SITUATION AND ITS EFFECTS

The city of Berkeley has a unique system of commissions that acts on a consultative basis with city council on a variety of topics. Like most organizations, commissions need to constantly look at ways to improve their process. The current code regarding the operations of the city commissions is unclear in several areas and this resolution attempts to find solutions to these needs.

BACKGROUND

On 9/16/2015 the HWCAC held a public meeting with a resolution on Divestment from Israel as one of the agenda items. Just before the start of that meeting, Cheryl Davila, the commissioner who had brought the resolution forward was informed that she was being removed by her appointing councilperson, Darryl Moore. According to Ms. Davila, Councilperson Moore had a conversation with her a day before the meeting and had warned her to pull the resolution or face the consequences. This dismissal just before the meeting effectively removed Ms. Davila from the debate that night and from any potential vote on the resolution.

In addition to the dismissal, several members of the council appointed new commissioners to the HWCAC just before a vote on the resolution. One of these last minute appointments was for only one meeting, which happened to be the one on 10/21/2015 where the divestment resolution was being voted on. Two other last minute appointments, including one by Darryl Moore, provided votes against the resolution,

consistent with what their council appointer had wanted. Other appoints didn't even show up for the meetings, and were eventually removed. Whether these appointments were made to purposely manipulate the vote is a separate discussion, but they gave that impression to many commissioners and members of the public. We firmly believe that whatever your feelings are in regards to a topic, in this case Divestment from Israel, the rights of commissioners and the public to engage in open debate and to a fair vote on the topic should not be compromised. These actions by city council highlight how the current code is vague on dealing with some aspects of commissioner dismissals and appointments and how that lack of clarity may be used to exert influence on commissioners and manipulate open debate. This resolution recommends several changes to the code regarding commissions in an effort to clarify these points and protect the role of the commissioner and improve the performance of these valuable groups.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated the action suggested in this report.

RATIONALE FOR RECOMMENDATION

As a member of the commission system the Human Welfare and Community Action Commission has a vested interest in the improved operations of the commission system. In addition, we believe that clarifying certain parts of the process will help the commission system to better serve the community by providing the opportunity for people to tackle difficult subjects.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Wingyin Wong, Commission Secretary, HHCS, (510)981-5428

Attachments:

1: Resolution

RESOLUTION NO. ##,###N.S.

Commission Improvement Process

WHEREAS, the Human Welfare and Community Action Commission is organization with the city's commission program and has a vested interest in the approved function of the commissions.

WHEREAS, here is potential for the commission appointment process to be used in ways that it may not have been intended.

WHEREAS, the set of rules regarding the removal of commissioners by their appointing city council member is not clearly defined.

WHEREAS, we believe the system could be improved with closer contact between commissioners and their appointing city councilpersons.

NOW THEREFORE BE IT RESOLVED by the City Council of the city of Berkeley that the city manager examine the feasibility making changes to the existing city code to improve the operations of the commission process.

BE IT FURTHER RESOLVED that BMC 3.78.030 Vacancy and Removal Section A Sentence 2 be amended with the following or similar language. "Vacancies on the board shall result when a member notifies the City Clerk of his/her resignation, or when an elected member moves and establishes residence outside of his/her election district, or when a commissioners appointment is revoked by the appointing city council member in writing with a minimum of 30 days' notice." This will ensure that any terminations of appointment are done with advanced notice and will ensure against the conflicts of interest that may arise from last minute removals of commissioners.

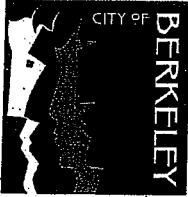
BE IT FURTHER RESOLVED that BMC 3.78.030 Vacancy and Removal Section B Sentence 1 be amended with the following or similar language. "...finish the unexpired term of the appointment. This vacancy appointment may not vote on commission items till the 2nd meeting following their appointment." This will ensure against the conflicts of interest that may arise from that last minute appointments made to affect the outcomes of votes.

BE IT FURTHER RESOLVED that BMC 3.78.040 Temporary Vacancies Sentence 3 shall be amended with the following language. "...remaining representatives of the poor, as long as that appointment is approved by a minimum of 3 representatives of the poor, if three representatives of the poor are not available then the temporary appointment may be voted on by a quorum of commissioners and may be approved by a majority of the quorum." This change ensures that any temporary vacancies on the Human Welfare

and community Action Commission are approved by a minimum number of members of the commission, currently there is no defined number of voting members required.

BE IT FURTHER RESOLVED that BMC 3.78.050 officers, meeting, and procedures be amended with the following or similar language "E. City Council members will meet with the commissioner appointees in person, or via a phone call or online meeting every 6 months starting on the day of their appointment." This will help ensure better communication between council members and their appointees.

BE IT FURTHER RESOLVED by the city council of the city of Berkeley that the city manager and city attorney examine and changes necessary to apply the appropriate changes to the code in regards to all of the city's commissions.



Police Review Commission (PRC)

March 16, 2016

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer *KJL*

Re: Status of two post-incident review recommendations

The Police Review Commission is inquiring about the status of two recommendations BPD made in its "Response to Civil Unrest" post-incident review of its actions on December 6 and 7, 2014:

Recommendation #4 – BPD should acquire a high quality mobile mounted public address system. This equipment would also be an asset during natural disasters.

Recommendation #32 – The Department should investigate the use of body armor to be worn underneath a uniform of the day, to protect officers from projectiles while minimizing the projection of force to protestors.

The PRC, in its review of the events of December 6, endorsed both recommendations as written. The Commission now wishes to know what progress you have made in acquiring a mobile PA system and in purchasing body armor for wearing under uniforms. The PRC would also like to hear if it can do anything to assist your department in making these acquisitions.

This inquiry is made in accordance with the Commission's action at its March 9, 2016 meeting. Thank you.

cc: Police Review Commissioners

PRC Priority List

As decided at the December 9, 2015 meeting
Updated March 17, 2016

Top Ten List (NOT in order of most votes)	Notes
Investigation into BPD response on Dec. 7 & 8, 2014	Subcommittee formed and meeting.
Revision of General Orders, incl. C-64, U-2, M-2	Subcommittee formed and meeting.
Body worn and dash cameras (for 7.19 Council Work Session, due to clerk 6.16)	Subcommittee formed and meeting.
Fair and Impartial Policing (includes racial profiling concerns; evaluation and review of recently-released stop data; review of CPE analysis, when released)	Subcommittee formed.
Policy review re Identification of race on traffic citations	Assign to F&I Policing Subcommittee.
G.O. W-1: Right to Watch	BPD revision presented at 2.24.16 meeting; discussion 3.9 and 3.23.
BPD acquisition of non-military armored vehicle	To be agendized.
Review of BOI procedures and underlying authority (Copley Press, PSOBRA, BPA v. COB, etc.)	Staff to prepare memo.
Review of pending regulation changes, and discussion of possible actions, including promulgation and implementation of agreed upon regulation changes and report to Council	Agendized for 3.23.16 meeting.
City Council directive of 1.26.16 to work with BPD on recommendations from reports re response to Dec. 2014 protests. Also, Protest Guide on BPD website (formerly a separate item on this list).	Items not referred to General Orders or Media Credentialing Subcommittees agendized for 3.23 meeting.
High priority; other action	
General Order regarding treatment of Transgender Persons	Subcommittee formed and meeting
Evaluation of City policies regarding seizure and storage of homeless persons' property, arising out of Liberty City dismantling.	Initial plan for PRC special meeting inviting other departmental reps revised to meeting at which BPD rep and Liberty City reps will make presentations.
Additional items to be agendized	
McKinley Ave. Staging – policy review	Capt. Greenwood to return for final report 3.23.16 meeting.
Propose all BPD Use of Force Reports be sent to PRC within 21 days	Inquiry to City Attorney from PRC Officer 1.22.16.

PRC Priority List

As decided at the December 9, 2015 meeting
Updated March 17, 2016

Request for Intelligence report from Chief Meehan, as required under General Order C-1, for at least the last three years	BPD response agendized for 3.9 meeting; continued to 3.23.
Commissioner training on law and police procedures	Begin Spring 2016.

Remaining items	
Outreach – community awareness of who the PRC is and what it does	
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.
Policy review of Citations to bicyclists running red lights	(A. Bernstein would like to add "Idaho stop" issue.)
How to read CAD reports	
Achieving agreement with BPD regarding consultation on all new and changes to G.O.s	
BPD budget review	
BPD preparedness and capacity	Comm. Roberts' item.
Media credentialing policy	Subcommittee formed but activity on hold (per discussion 1.27.16).

PRC requests to BPD, as prioritized February 10, 2016
 Updated March 17, 2016

Date/form of request	Request	Status/Notes
<i>Not prioritized, since BPD has set dates for return:</i>		
9.5.15 letter	Right to Watch G.O.: please revert to old while reviewing the revised policy	BPD submitted revised G.O. for 2.24.16 meeting; further discussion 3.9 and 3.23.
Mid-2015	McKinley Ave. staging – follow-up	Capt. Greenwood to present at 3.23.16 meeting
3.9.16 Oral	Liberty City activity – PRC decides to hear BPD presentation	BPD to present at meeting date TBD
GROUP I		
12.9.15 oral	Center for Policing Equity analysis of stop data – when?	At 2.24.16 meeting, Capt. Harris said CPE analysis should be ready in July.
1.13.16 oral	G.O. C-1 – request for annual report, as required under the G.O., for the past 3 years.	BPD submitted for 3.9.16 meeting.
2.3.16 letter	Provide inventory of less-than-lethal weapons and munitions	BPD to submit for 4.13 meeting.
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 (per Lt. Montgomery).
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?	
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?	
<i>Note: This list does not include requests related to Council directive to PRC and BPD to work on recommendations following review of December 6, 2014 response; assume high priority.</i>		

