

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**Wednesday, February 24, 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 February 10, 2016
- 5. CHAIR'S REPORT**
- 6. CHIEF OF POLICE'S REPORT**  
Budget, staffing, training updates, and other items.
- 7. PRC OFFICER'S REPORT**  
Status of complaints; announcements.
- 8. OLD BUSINESS (discussion & action)**
  - a. Fair & Impartial Policing training for community on April 9, 2016: update and deciding which Commissioners will attend.
  - b. Plan for implementation of Council directive regarding PRC and BPD recommendations following BPD response to December 6, 2014 protests.
  - c. 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.

**9. NEW BUSINESS (discussion & action)**

- a. Review of revised General Order W-1 (Right to Watch) proposed by BPD.

**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; scheduled 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**

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**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, 3<sup>rd</sup> floor, during regular business hours.

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

# COMMUNICATIONS FOR PRC REGULAR MEETING February 24, 2016

## MINUTES

February 10, 2016 *Regular Meeting*

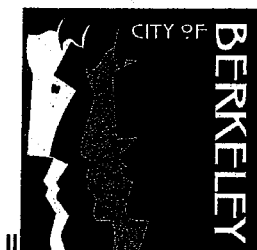
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## COMMUNICATIONS

**Communications #1299 – (DRAFT) BPD General Order W-01 (The Right to Watch).** Page 11

**Communication #4435 – Email from PRC Officer dated February 11, 2016 to Police Chief re PRC's prioritization of requests from the PRC.** Page 13





Police Review Commission (PRC)

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

**February 10, 2016  
7:00 P.M.**

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

**1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:12 P.M.**

**Present:** Commissioner George Perezvelez (Chair)  
Commissioner Terry Roberts (Vice-Chair)  
Commissioner Alison Bernstein  
Commissioners 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:** Capt. Cynthia Harris (left 7:45 pm), Lt. Dan Montgomery, Sgt. Benjamin Cardoza, Sgt. Sean Ross (left 9:15 pm), Ofc. Marcus Dinkins (arrived 9:15 pm)

**2. APPROVAL OF AGENDA**

**By general consent, the agenda was approved with the postponement of Item # 8.a. to March 23.**

**3. PUBLIC COMMENT**

There were 4 speakers.

**4. APPROVAL OF MINUTES**

**Motion to approve Regular Meeting Minutes of January 27, 2016**

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

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

**Noes:** None

**Abstain:** None

**Absent:** Smith

## **5. CHAIR'S REPORT**

None.

## **6. CHIEF OF POLICE'S REPORT**

Capt. Harris reported:

-- BPD will present its annual crime report to City Council at a worksession March 8, and asked if PRC wants a presentation also. (Yes; PRC Officer to coordinate date.)

-- Currently at 170 sworn officers, which includes 5 who graduated last week.

Looking at lateral hires. Challenges in recruiting and hiring has been a regional and national problem.

-- Working on strategic plan and would like to speak to PRC at future meeting.

Surveying community and employees.

-- Working with BHS to set up administration of justice program. Designed to expose young people to law enforcement with hope of sparking interest in becoming police officer.

-- Returning \$125K school resource officer grant.

Questions:

-- Why the recruiting difficulties? Unsure, but a little harder here because BPD requires college.

-- Acknowledged work of BPD today in detaining a suspect. Mutual aid was not invoked, as that's when you call the sheriff. Today's incident began in Oakland and suspect drove to Berkeley; as it unfolded, other law enforcement agencies became involved.

-- U.S. Dept. of Justice report on 21<sup>st</sup> century policing (implementation guidelines) -- yes, BPD very aware of it. It will be required reading for every promotional test.

-- Reiterated offer to make presentation about Liberty City -- please send proposed dates.

## **7. PRC OFFICER'S REPORT**

-- Re. who authorized removal of Liberty City, PRC Officer repeated that it was the City Manager's decision. Public Works Dept. stored the property, PRC Officer doesn't know why people said they couldn't retrieve their property or how/why they recently found out where their things are.

-- Agenda packet p. 15 contains portion of Council annotated agenda from January 27, 2016 re their action on PRC's Investigative Report of Dec. 6, 2014.

-- Need approval of General Orders Subcommittee agenda for Dec. 18.

-- Recently emailed tickets to attendees for April 7 Oakland CPRB conference on racial profiling in policing to Commissioners Bernstein, Javier, Lippman, Roberts. Commissioner Smith and PRC Investigator Norris also attending.

-- City offices closed Feb. 12 and 15; PRC Officer vacation week of Feb. 15.

-- Two new complaints filed this week.

## **8. OLD BUSINESS (discussion and action)**

- a. Policy Complaint #2362 & #2363 -- McKinley Avenue staging: Status report from BPD regarding changes to policies and procedures to ensure residents' concerns are considered when BPD must stage personnel and equipment outside the Public Safety Building and its parking lot.

*(At the BPD's request, this item is postponed until the March 23, 2016 meeting.)*

- b. PRC Regulations For Handling Complaints Against Members of the Police Department: status of meet-and-confer between City and BPA; response to inquiry re PRC Chair sitting in on meet-and-confer; proposal to enter into an MOU with Berkeley Law on a Standards of Proof Collaboration.

**Motion to both write a letter asking the City Manager to sign the MOU with the Berkeley Law Policy Advocacy Clinic and reach out to the professor who runs the clinic, explain the difficulty with an MOU, and ask if they'll do the work without one.**

Moved/Seconded (Bernstein/Lippman)

**Friendly amendment: Write the letter to the City Manager unless, by February 22, 2016, the clinic says they don't need an MOU.**

(Moved by Roberts; Accepted by Bernstein)

**Motion, as amended, carried**

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

Noes: None

Abstain: None

Absent: Smith

- c. Amend Standing Rules to include guidelines and process for appointing non-PRC members to PRC subcommittees.

(Heard following Item #9.c.)

**Motion to approve having community members appointed to subcommittees with all rights that PRC commissioners have, but not the right to vote.**

Moved/Seconded (Roberts/Yampolsky) Motion Failed

Ayes: Roberts, Sherman, Yampolsky

Noes: Bernstein, Javier, Lippman, Perezvelez, and Waldman

Abstain: None

Absent: Smith

**Motion to adopt Commissioner Perezvelez's proposed language allowing community members to serve on PRC subcommittees [i.e., the language shown on page 14 of the packet, with his changes to paragraphs 2 and 7, Commissioner Perezvelez having withdrawn his proposed changes to paragraph 4].**

Moved/Seconded (Lippman/Bernstein) Motion Carried

Ayes: Bernstein, Javier, Lippman, Perezvelez, Sherman, Waldman

Noes: Roberts, Yampolsky

Abstain:

Absent: Smith

- d. Fair & Impartial Policing training for community on April 9, 2016: which Commissioners will attend; authorize Commissioner Bernstein to continue representing PRC in planning.

**By general consent, the Commission postponed discussion of who would attend, and authorized Commissioner Bernstein to continue representing the PRC at planning meetings.**

**9. NEW BUSINESS (discussion and action)**

- a. Plan for implementation of Council directive regarding PRC and BPD recommendations following BPD response to December 6, 2014 protests.

Discussion without action taken.

- 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.

**By general consent, this item was postponed to the next meeting.**

- c. Whether to undertake a policy review of the BPD's involvement in the actions against Liberty City in December 2015, and if yes, what priority it should have, and how the commission should proceed.

(Heard following Item #8.b.)

**Motion to have a special meeting to which the PRC invites representatives from other Commissions to participate; and arrange for presentation from BPD, Public Works Department, Public Health Division, and City Manager's Office; preferred dates are March 2 or 16, but later if needed, and not March 30, 2016.**

Moved/Seconded (Bernstein/Waldman) Motion Carried

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

Noes: None

Abstain: None

Absent: Smith

- d. Prioritization of PRC's requests to BPD.

**By general consent, the Commission prioritized their pending requests into three groups of relative importance, other than two items that are returning to the Commission on dates certain, and a third item that will be part of the recommendations resulting from the review and investigation of the BPD response on December 6, 2014.**

**10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion and action)**

- a. Body-Worn and Dash Cameras Subcommittee

An update of today's meeting was given. Will be scheduled for a July 12 Council worksession. Next meeting date February 24, 2016, at 5:30 p.m.

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

First meeting will be February 18, 2016, at 6:00 p.m. (Correcting agenda, which states February 11 at 5:30 p.m.)

- c. December 7 & 8 Investigation Subcommittee

Held one meeting and next meeting date February 24, 2016, at 5:30 p.m.



d. Transgender G.O. Subcommittee

**By general consent, this subcommittee was renewed.**

PRC Officer will send email regarding possible dates to meet

## **11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached.

## **12. PUBLIC COMMENT**

There was one speaker.

## **13. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Seconded (Bernstein/Roberts) Motion **Carried**.

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

Noes: None

Abstain: None

Absent: Smith

Meeting was **adjourned** at 10:04 p.m.



**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: TBD**

**GENERAL ORDER W-01**

**Draft**

**SUBJECT: THE RIGHT TO WATCH**

**COMMUNICATION No. 1299**

**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.



**From:** Lee, Katherine  
**Sent:** Thursday, February 11, 2016 4:58 PM  
**To:** Meehan, Michael <MMeehan@ci.berkeley.ca.us>  
**Subject:** PRC's prioritization of requests from the PRC

**COMMUNICATION No.** 4435

Dear Chief Meehan,

You asked the PRC prioritize its requests to the BPD and, at its meeting last night, February 10, they did so. Please see the attached. Note that instead of ranking each individual item, the Commission placed the items into three groups of importance. Finally, you will see that the two items already scheduled to return to the PRC at future meetings are not included in those groups, and the last item on the list is not grouped because it relates to one of the recommendations resulting from the review/investigation of the BPD's response on December 6, 2014.

Sincerely,  
Kathy

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

PRC requests to BPD, as prioritized February 10, 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	At 1.13.16 meeting, Capt. Harris said will present revision for PRC review at its 2.24.16 meeting.
Mid-2015	McKinley Ave. staging – follow-up	Capt. Greenwood to present at 3.23.16 meeting
<b>GROUP I</b>		
12.9.15 oral	Center for Policing Equity analysis of stop data – when?	At 1.13.16 meeting, Capt. Harris said CPE still analyzing and won't have update re progress until February.
1.13.16 oral	G.O. C-1 – request for annual report, as required under the G.O., for the past 3 years.	At 1.27.16 meeting, Capt. Harris reported this has been assigned to a staff member.
2.3.16 letter	Provide inventory of less-than-lethal weapons and munitions	
<b>GROUP II</b>		
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?	
<b>GROUP III</b>		
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>Removed from list as an item to be included in work on Council directive:</i>		
12.9.15 oral	EBRCS: status of work to establish common encrypted radio channels	