

Police Review Commission (PRC)

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

**Wednesday, July 13, 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 Alison Bernstein (arrived 7:32 p.m.)  
Commissioner Kimberly DaSilva  
Commissioner George Lippman  
Commissioner Michael Sherman  
Commissioner Kad Smith (left 9:00 p.m.)  
Commissioner Ari Yampolsky (arrived 7:17 p.m.)  
Commissioner Bulmaro Vicente (*temporary appointee*)

Absent: Commissioner Jerry Javier

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery, Sgt. Katie Smith, Sgt. Sean Ross (left 8:00 p.m.), Ofc. Marcus Dinkins (arrived 8:00 p.m.)

**2. APPROVAL OF AGENDA**

**The agenda was approved by general consent.**

- **A moment of silence** was observed for:

Philando Castile in Falcon Heights, Minnesota, and Alton Sterling in Baton Rouge, Louisiana;  
Dallas police officers Brent Thompson, Patrick Zamarripa, Michael Krol, Michael Smith, and Lorne Ahrens; and  
Anthony Nunez [San Jose, CA] and Pedro Villanueva [Fullerton, CA].

### 3. PUBLIC COMMENT

There were 3 speakers.

### 4. APPROVAL OF MINUTES

#### a. Special Meeting of June 8, 2016

**Motion to approve Special Meeting minutes of June 8, 2016**

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

Ayes: Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: DaSilva

Absent: Javier, Bernstein

#### b. Regular Meeting of June 8, 2016

**Motion to approve the Regular Meeting minutes of June 8, 2016, with the following corrections to page 3, second motion to retain Section 450.7.2: 1) the motion carried; and 2) Commissioner Smith did not vote Aye (his No vote is properly shown).**

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

Ayes: Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: DaSilva

Absent: Javier, Bernstein

- **Motion to next consider Item #10.a. Subcommittee reports: Fair & Impartial Policing**

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

Ayes: DaSilva, Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain:

Absent: Javier, Bernstein

### 5. CHIEF OF POLICE'S REPORT

*Heard following Item #10.a.*

a. Crime, budget, staffing, training updates, and other items.  
(No report on these items.)

b. Update on police-community relations referrals to Council.

Capt. Frankel provided an abbreviated version of the BPD's report to Council on these topics:

--Body-Worn Cameras

--Racial Sensitivity

--Center for Policing Equity

--Law & Justice Academy at BHS -- kickoff September

--A second School Resource Officer

--Encouraging officers to engage with youth

--Current SRO has MSW from UC

--Restorative justice programs

--Drug task force

Questions/comments:

- Maybe PRC could participate in L&J Academy. Thanks for YAP, which I (Comm. Smith) benefitted from.
- How's morale? Recruiting is hard. After Dallas shootings, sent out patrols in teams of two, not so much for safety, but more comforting.
- Re proposed body-worn camera proposed pilot program – does \$45K include equipment and staffing? For 20 cameras \$150K allotted; \$45 for vendor and \$105 for staff. IT leaning towards cloud-based solutions.
- Re BPD's proposed BWC policy – why allow officer to view footage when extreme use of force (UOF) but not death or officer involved shooting? Distinction is that key factor in latter investigations is whether UOF justified or not. Trying to isolate state of mind of officer during shooting; trying to assess that sense of threat. Other UOF, requirement to not see video is one step removed from mission, to convey the truth.
- Clarify the ½ hour fair & impartial trainings. Those are roll call sessions, usually when explaining data collection.

**6. CHAIR'S REPORT**

- Thank officers for their service.
- Participated in discussion of police oversight at Wellstone Democratic Club; looked at SF, Oakland, and Berkeley models.
- Went to Washington DC with Capt. Greenwood at DOJ presentation by Center for Policing Equity. Attorney General Lynch addressed the group. Looking forward to report on BPD data.
- City Council Worksession July 19 on Body-Worn Cameras. He and vice chair will be present. Encourage all Commissioners to attend.
- Meeting being set up with City Manager, Chief, Chair, Vice-Chair, PRC Officer to discuss items 9.f. (excusing subject officer from BOI) and 8.a. (standard of proof).

**7. PRC OFFICER'S REPORT**

- Two new complaints filed since last meeting; one complainant has opted for mediation.
- Reminder that August 2 is National Night Out; consider participating as part of your outreach efforts.
- Capt. Harris is retiring; her last day July 29. Reminder about reception Thursday, July 21, 1 – 4 p.m.; all Commissioners invited but RSVP.
- Thank officers for their service.

**8. OLD BUSINESS (discussion & action)**

*Heard following Item #9.e.*

- a. Follow-up on PRC's letter to City Manager regarding the standard of proof used in BOI hearings  
*Item postponed to the next meeting.*

- b. Review of draft PRC Annual Report  
Changes to Commissioner Bernstein's letter, and description of the December 6, 2014 protest response were discussed.

**By general consent, the Commission continued the discussion until the next meeting.**

- c. Decide on scope and any next steps in December 7 & 8, 2014 investigation  
Subcommittee members Bernstein and Sherman explained what they have determined so far.

**By general consent, the Commission continued the discussion until the next meeting.**

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

- a. BPD use of automated license plate readers (ALPRs) and Administrative Order #001-2016 providing guidelines for ALPR use.

**Motion to recommend that City Council suspend ALPR portion of the program in order to allow for a broader discussion about the implications of the ALPR; commission is concerned about the privacy concerns implicated with ALPRs and it doesn't appear full discussion with the community about the implications of implementing an ALPR program as part of goBerkeley. Encourage the Council to suspend the ALPR portion of goBerkeley in order to allow for there to be a full community discussion about the implications of ALPR.**

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

Ayes: Bernstein, DaSilva, Lippman, Sherman, Vicente, and Yampolsky.

Noes: Roberts                      Abstain: Perezvelez                      Absent: Javier, Smith

- b. Response to City Attorney opinion regarding release of Use of Force Reports

**Motion to request of the Berkeley Police Department that when they release data to the state Department of Justice, that they simultaneously release it to the PRC.**

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

Ayes: Bernstein, DaSilva, Lippman, Perezvelez, Roberts, Sherman, Vicente, and Yampolsky.

Noes: None                      Abstain: None                      Absent: Javier, Smith

- c. Consider initiating policy review regarding operation of DUI checkpoints  
*Item postponed to the next meeting.*

- d. Status of request to BPD to revise General Order on the Right to Watch  
*Item postponed to the next meeting.*

- e. Inquiry into why BPD has not been providing monthly management reports to the City Manager as required by General Order M-3.

*Heard following Item #7.*

**Motion to write a letter from the PRC to the Police Chief, City Manager, and City Council stating that it has come to our attention that the means outlined in General Order M-3 for quantitative reports from the Police Department to the City Manager are no longer in use. It is our understanding that there has been no quantitative reporting under G.O. M-3 since before Chief Meehan's tenure. We are unaware of any other quantitative reporting that has been done, and are very concerned about the apparent absence of a regular means for the City Manager to receive quantitative data as to the department's operations. We urge that this be corrected quickly as possible.**

Moved/Seconded (Bernstein/Lippman)

**Friendly amendment #1: To add that we encourage that this issue be addressed in the upcoming meeting with the City Manager.**

Moved by Perezvelez; Accepted by Bernstein and Lippman.

**Friendly amendment #2: To direct the letter first to the City Manager and BPD for an explanation, and elevate to the Council if needed.**

Moved by Smith; Accepted by Bernstein and Lippman.

**Motion, as amended, Carried**

Ayes: Bernstein, DaSilva, Lippman, Perezvelez, Roberts, Sherman, Smith, Vicente, and Yampolsky.

Noes: None

Abstain: None

Absent: Javier

- f. Status of inquiry to City Manager regarding excusing a subject officer from appearing at a BOI.

*Item postponed to the next meeting.*

- g. Scheduling a training by BPD on use of force and de-escalation techniques.

**By general consent, the Commission agreed to hold a special meeting for this training.**

- h. Prioritization of any new issues the PRC has decided to address.

*Item postponed to the next meeting.*

- i. Review of 2015 Internal Affairs complaint statistics.

*Item postponed to the next meeting.*

#### **10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)**

- a. Fair & Impartial Policing Subcommittee

*Heard following Item #4*

Christina Murphy and Paul Kealoha-Blake presented themselves to the Commission as candidates for public members of subcommittee. The Chair appointed both.

Next meeting scheduled for July 18, 2016 at 5:30 p.m.

- b. General Orders C-64, etc. Subcommittee  
Next meeting scheduled for Thursday, July 21, at 5:30 p.m.
- c. December 7 & 8 Investigation Subcommittee  
No meeting scheduled.
- d. Mutual Aid Pacts Subcommittee  
The Chair appointed Commissioners DaSilva, Bernstein, and Sherman to this Subcommittee, whose role is to review the BPD's agreements with other law enforcement agencies.

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

Attached.

#### **12. PUBLIC COMMENT**

There were 2 speakers.

***Closed Session***

#### **13. VOTE ON COMPLAINANT'S PETITION FOR REHEARING**

**Motion to deny petitioner's request for a rehearing, because there were no procedural irregularities and no newly-discovered material evidence. The letter informing the petitioner of the denial should include an explanation for it, e.g., failure to explain the reasoning for the findings is not a procedural irregularity; information is withheld because of state law.**

Moved/Seconded (Bernstein/\_\_\_\_\_) **Motion Carried**

Ayes: Bernstein, Lippman, Perezvelez, Roberts, Sherman, Vicente, and Yampolsky.

Noes: None

Abstain: DaSilva

Absent: Javier, Smith

***End of Closed Session***

#### **14. ANNOUNCEMENT OF CLOSED SESSION VOTE**

The above vote was announced.

#### **15. ADJOURNMENT**

**The meeting was adjourned by general consent at 10:32 p.m. in memory of: Philando Castile, Alton Sterling, Brent Thompson, Patrick Zamarripa, Michael Krol, Michael Smith, Lorne Ahrens, Anthony Nunez, and Pedro Villanueva.**

# COMPLAINT DEADLINES REPORT

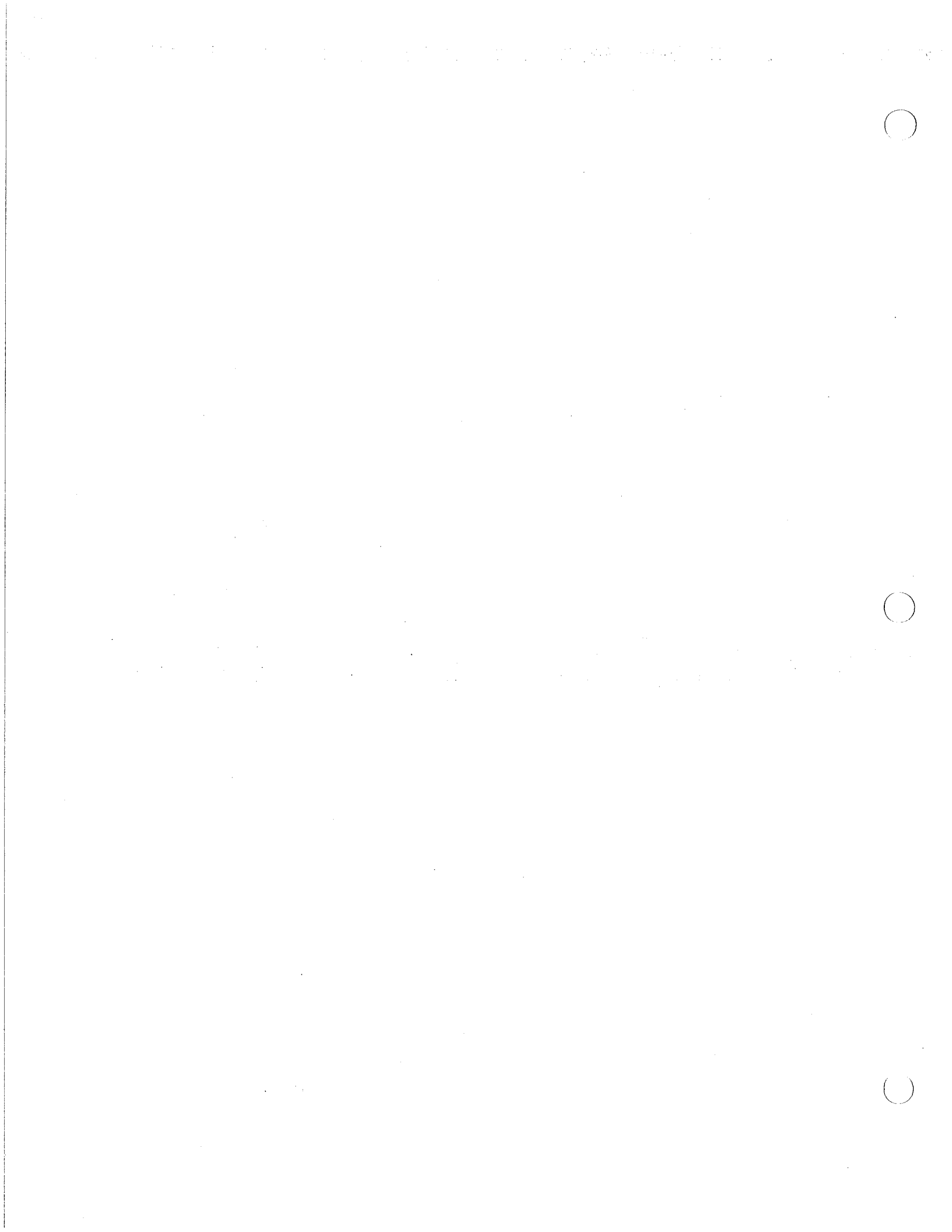
INVESTIGATIONS										
NO.	Complainant	Filed Date	Incident Date	Notice of Allegations Due (20 Bus Day)	Notice of Allegations Issued	BOI Packet (30 days)	BOI Packet Issued	BOI Findings Report Goal (105 days)	120 Days	STATUS
2385		10/19/15	Sep-15	11/16/15	11/13/15	07/25/16	7/13/16	n/a	n/a	BOI 8-19
2391		01/25/16	Nov-15	02/22/16	02/01/16	04/14/16	04/20/16	05/09/16	05/24/16	BOI continued
2395		03/09/16	Feb-16	04/06/16	03/16/16	05/28/16	05/13/16	06/22/16	07/07/16	BOI continued
2400		06/06/16	Jun-16	07/01/16	06/30/16	08/25/16		09/19/16	10/04/16	Investigation

\*criminal tolling from 10/19/15 to 5/6/15

MEDIATION										
NO.	Complainant	Filed Date	Date of Election	Notice of Election to Officer Due (5 bus day)	Notice of Election Issued	Officer Agreed to Mediation	SEEDS Referral Date	Date of Mediation	Notice of Closure to Comm.	STATUS
2396	NATHANIEL GREER	03/10/16	03/10/16	03/17/16	03/14/16	Y	03/31/16			initially delayed*
2401	PITCHER, STEPHEN	07/07/16	07/07/16	07/14/16	07/08/16	Y	07/14/16			awaiting mediation date *officer unavailability

POLICY REVIEWS								
NO.	Complainant	Filed Date	Notice of Complaint to BPD	Due to Comm (30 days or next mtg.)	Initial Commission Meeting Date	Commission Resolved Y/N	Admin. Closure Due	STATUS
2377	CAROL DENNEY	06/22/15	07/10/14	07/22/15	07/08/15	n		Investigation
2384	STEPHEN PITCHER	09/21/15	09/23/15	10/21/15	10/14/15	n		Investigation

CALOCA APPEALS									
NO.	Complainant	Officer Appeal Filed	PRC Records Due (60 days)	Officer Brief Filed Y/N	PRC Brief Due	PRC Brief File Date	OAH Hearing Date	OAH Decision Due	STATUS
2380		11/25/15	01/24/16	Y	05/19/16	05/13/16	06/02/16	08/01/16	





**For May 25, 2016 PRC Meeting from Dec. 7 & 8 Investigation Subcommittee**

The Berkeley Police Review Commission has undertaken a review of the events that occurred on the evening of December 7 into the early morning hours of December 8, 2014. Our review focused on the BPD response to the widespread property destruction that occurred throughout the City, as individuals attending the Black Lives Matter protests, some of whom may have been associated with the Black Bloc movement, engaged in violent conduct and looting. All told 17 stores were vandalized, seven of which were locally owned small businesses. The loss sustained by the 17 businesses, including both property damage and theft, ranged from \$300 to \$42,000. The Commission is concerned with the failure of BPD to stop the destruction of property and looting that occurred that night, particularly as it is evident that there are certain groups, both Black Bloc organizations representing a particular political viewpoint, and those who see these protests as an opportunity for looting, who are likely to continue to be present at future demonstrations in Berkeley.

After careful review of the available materials documenting the BPD response on December 7-8, the PRC has identified three areas of particular concern that we believe would benefit from a more focused discussion and review. It is our hope that such a review will assist in ascertaining whether further policy development could avoid similar problems in the future.

- 1) The BPD prioritized protecting the Public Safety Building (PSB) over all other critical infrastructure, and over private property. The commission is concerned about the basis for the decision, as the substantial allocation of law enforcement resources at the PSB contributed to the department's inability to mitigate the large scale damage to other critical infrastructure, and non-critical civic and private buildings. We encourage development of a policy identifying what factors the department should consider in allocating resources to protect all our critical infrastructure, non-critical civic and private property when it appears likely that Black Bloc or looters have become, or are likely to become a significant factor in any protest.
- 2) It appears to the PRC that BPD does not have a plan for how best to deploy officers and resource to contain and control a crowd that engages in ongoing acts of vandalism and looting. The PRC strongly recommends that BPD investigate best practices for deployment to contain and control Black Bloc protesters and looters
- 3) One of the problems that we understand contributed to the BPD's difficulty in mitigating the large scale damage to property that occurred on December 7-8 was the initial denial of our request for mutual aid, and consequently the small size of the force available to respond to the protests in the initial stages. However, once mutual aid arrived on December 7-8, they were not utilized in an efficacious manner to contain and control the ongoing vandalism and looting. This issue should be more thoroughly examined, and considered in conjunction with the two issues outlined above.
- 4) During the course of the protests in December, over twenty emergency calls were delayed. Some of this delay was caused by congestion in the streets preventing and delaying BFD from responding, and some because BFD was waiting for BPD escorts based on a decision that the call was entering a dangerous situation. However, review of some of the calls that were delayed suggests both that at the time of the emergency call, the protesters were three or four blocks away, and BPD had

**For May 25, 2016 PRC Meeting from Dec. 7 & 8 Investigation Subcommittee**

determined that the protesters were heading away from the location of the emergency call. Further discussion is needed of how BFD and BPD communicate in emergency situations about the potential risks of responding to particular call, as well as the size of the BPD escort needed. The City should also examine whether it is feasible to relocate BFD emergency services away from the City Center, and reroute calls to the Stations on the outer ring of the City when protests result in congestion in the downtown area.

The Commission also has a series of questions the answers to which we think will assist in shedding additional light on the events of December 7-8. We would respectfully request that written answers, if available, be provided to the questions below and that we work together to find the answers to those questions for which the answer is not readily available. The commission believes that finding the answers to these questions will assist us in developing better policies.

**1. SRT DEPLOYMENT**

Why was SRT part of the original deployment? Was SRT deployed on December 6? If not, was the decision to deploy SRT December 7 a response to events of December 6? Can you please articulate what aspect of the SRT's specific training and resources were thought to be beneficial assets in either crowd control or crowd management. How, specifically, was SRT deployed on December 7-8. What is the assessment of the efficacy of that deployment.

**2. AUDIO RECORDINGS**

Are there audio recording of the BPD call channels that were used on December 7-8. Can we get those recordings, from every channel that was used on December 7-8.

**3. CITY HALL**

Is it accurate that executive staff were on the fifth floor of City Hall during protests of December 7-8? Was this information communicated to BPD command?

**4. PSB**

After the order at 1935 to break traffic control for PSB, how many officers remained at PSB, including mutual aid and command staff?

**5. MUTUAL AID**

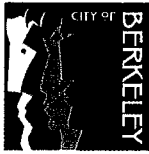
How many mutual aid officers/units ultimately responded on December 7-8? How were the mutual aid officers that responded on December 7-8 deployed? Fremont, Alameda, ACSO, CHP and UCPD appear to all have responded, what other agencies responded?

**6. DISPERSAL ORDERS**

How many dispersal orders, if any, were given on December 7-8?

**7. LESS LETHAL MUNITIONS**

How many less than lethal munitions, if any, were discharged on December 7-8? Can you identify the instances at which less than lethal munitions were used on December 7-8?



**BERKELEY POLICE DEPARTMENT**

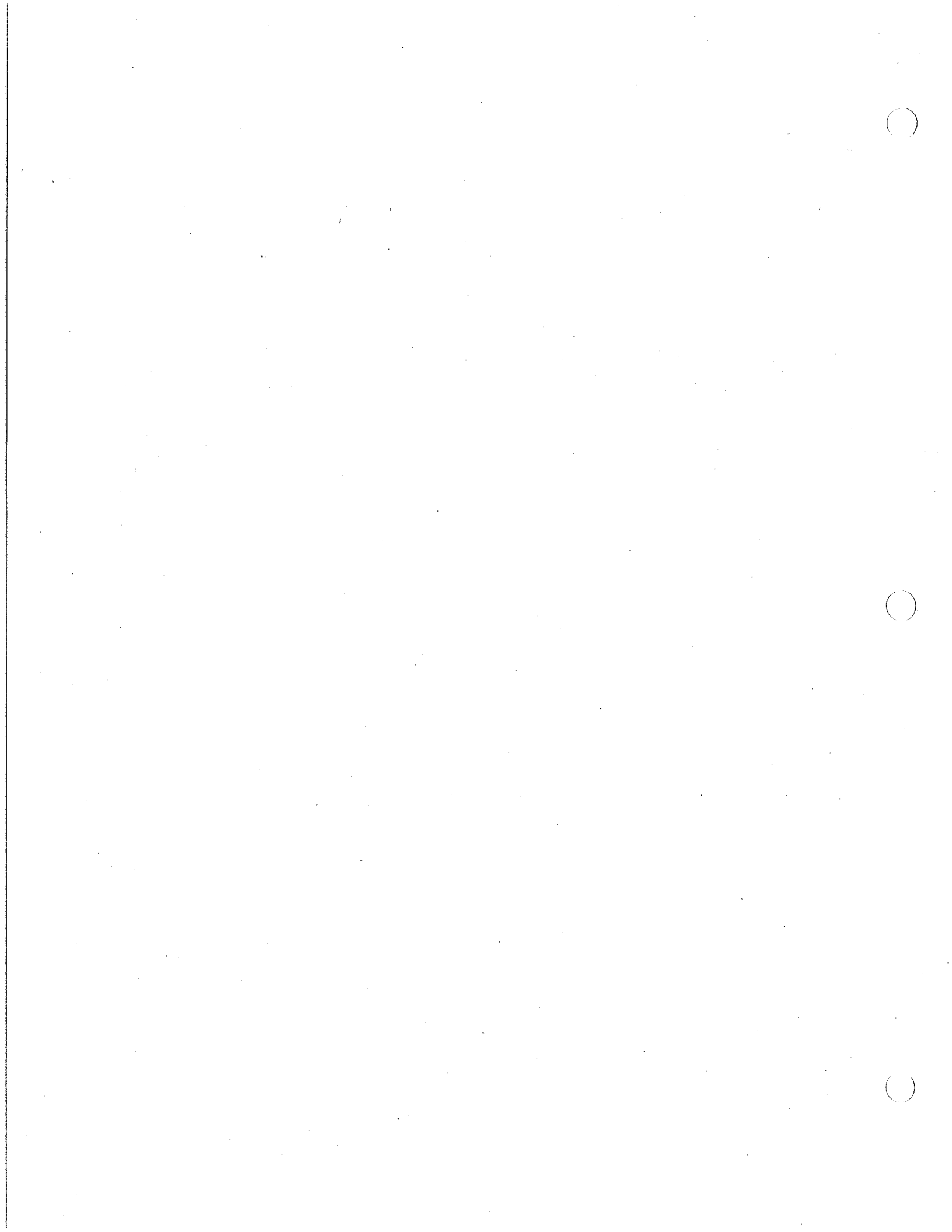


**2015 INTERNAL AFFAIRS STATISTICS**

	Complaints Received	Sustained	Not Sustained	Exonerated	Unfounded	Admin Closed
*External PRC	16	6	5	6	7	22
*External IAB	30					
Internal	27	24	0	0	2	1
Total	73	30	5	6	9	23
<b>Allegations</b>						
Improper Use of Force	11	0	0	3	2	6
Discourtesy	31	6	6	1	10	8
Improper Stop / Search / Seizure / Arrest	23	0	2	9	3	9
Inadequate Investigation	10	1	0	4	0	5
Improper Detention (Jail)	0	0	0	0	0	0
Discrimination	16	0	1	0	9	6
Harassment	11	0	0	0	3	8
Improper Procedure	71	24	1	7	25	14
Improper Citation / Tow	7	0	0	4	0	3
Other	6	0	0	0	0	6
Total Allegations	186	31	10	28	52	65

**These statistics include complaints on all employees of the Police Department.**

**\*External complaint dispositions are grouped together to protect employee confidentiality per PC 832.7**



**Lee, Katherine**

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**From:** ELLIOT R HALPERN <e\_halpern@sbcglobal.net>  
**Sent:** Tuesday, July 26, 2016 12:12 PM  
**To:** Lee, Katherine  
**Cc:** Tracy Rosenberg; JP Massar; Brian Hofer; Tessa D'arcangelew; Bharat Trehan  
**Subject:** PRC meeting Wed. 7/27 Item 9b- Please forward  
**Attachments:** Making Smart Decisions About Surveillance.pdf; Santa Clara Ordinance.pdf

Dear PRC Commissioners,

In the upcoming meeting this Wednesday there is a referral (item 9b) from city council on "Community Control and Surveillance Equipment".

With the breakneck speed surveillance technology and equipment is advancing and becoming available to law enforcement it is important that cities and counties have policies in place to insure transparency, accountability and oversight in the use of this equipment.. Without this vetting of use the ACLU has seen in some jurisdictions around the country misuse and violations of individual privacy and civil rights.

The ACLU in late 2014 launched a campaign to aid cities and counties in setting up these policies. I have attached a brochure that includes a template for an ordinance that will give you background in the need for this policy.

Many northern CA cities and counties are working on developing a "surveillance control" policy. Each is adopting language to suit there particular jurisdiction. I have attached the recently passed Santa Clara County policy. A finite policy will be forthcoming that is adapted for Berkeley by a coalition that is also working on the Oakland policy.

Elliot Halpern  
Board Member ACLU Berkeley/NEB chapter

