

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, February 27, 2019
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 13, 2019

- 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. SUBCOMMITTEE REPORTS (discussion & action)**

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Prioritizing Safety for Sex Workers Subcommittee
- b. Lexipol Policies Subcommittee
- c. MOU Compendium Subcommittee

9. OLD BUSINESS (discussion & action)

[Numbers in brackets following each item show rank resulting from Commission's Dec. 2018 prioritization of items.]

- a. Review all recommendations made regarding Lexipol Policy 425, Body-Worn Cameras. [#2]
- b. Consider whether to adopt Guiding Principles. [#16]
From: Commissioner Matthews
- c. Review PRC Officer's draft letter from Commission to the City Attorney asking what documents the PRC is entitled to obtain from the BPD. [#5, #11]
(To be delivered.)

10. NEW BUSINESS (discussion & action)

- a. Lexipol Policies for review and approval. [#7]
From: Lexipol Subcommittee

Lexipol #	G.O. (if any)	Title
207	C-03	License to Carry a Firearm
303	F-02	Control Devices and Techniques
308	Council Res.No. 51,408-N.S.	Canines
319	H-04	Hate Crimes
326	R-33	Reserve Officers
328	D-21, M-6	Registered Offender Information
330	E-09, O-1	Death Investigation
331		Identity Theft
332	T-19	Communications with Persons with Disabilities
335		Limited English Proficiency Services
339		Community Relations
800	C-04	Crime Analysis
340		Child and Dependent Adult Safety
400		Patrol Function
402		Briefing Training
405	T&IB 128	Ride Along Program
406	T-16 (sec. 35 onward)	Hazardous Material Response
423		Watch Commanders
431		Civil Disputes

No change from General Order

Lexipol #	G.O.	Title
208	R-18	BPD Forms
338	C-45	Chaplains
346	H-01	Honor Guard
348	J-18	Youth Services Detail
350	P-16	Public Appearances
429	C-64	First Amendment Assemblies
430	C-01	Intelligence Procedures for First Amendment Assemblies
436	N-18	Situational Awareness Group

- b. Empower the Chair to work with the PRC Officer to write a letter to the Mayor and City Council to inquire how the PRC can facilitate or participate in placing a Charter amendment on the ballot in 2020.
From: Commissioner Perezvelez

- c. Update on SB 1421: responding to Public Records Act requests; status of litigation and other actions statewide.
From: PRC Officer

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 981-6418 (V) or 981-6347 (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

February 27, 2019

MINUTES

February 13, 2019 Regular Meeting *Draft* Minutes Page 7

AGENDA-RELATED

Item 8. – PRC Subcommittee List updated 1-10-19. Page 13

Item 8.c. – Email dated Feb. 21, 2019 from PRC Officer to Commissioners re: MOU Compendium Subcommittee. Page 15

Item 9.a. – Feb. 21, 2019 memo from PRC Officer to Commissioners re: Recommendations on Body-Worn Camera policy; other communications regarding the policy. Page 17

Item 9.b. – Proposed Guiding Principles by Comm. Matthews. Page 25

Item 9.b. – Proposed Guiding Principles, by Comm. Perezvelez. Page 27

Item 9.b. – NACOLE Code of Ethics. Page 29

Item 10.a. – Lexipol Policies for consideration (*see separate packet*).

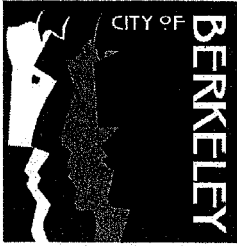
COMMUNICATION(S)

Email from Assistant to the Mayor, dated 2-13-19: Hit and Run at Durant and Telegraph, responding to 1-29-19 email inquiry. Page 31

Letter from Oakland Privacy, 2-15-19: Berkeley Ordinance No. 7,592-N.S., Acquisition and Use Of Surveillance Technology. Alleged Violation Notice. Page 37

Email from Mayor Jesse Arreguin to the BPD Chief, dated 2-20-19: Berkeley Police seize firearm stash armor piercing bullets in warrant search. Page 39

Article from East Bay Express dated Jan. 9, 2019: Oakland's Lost Year of Police Accountability. Page 41



Police Review Commission (PRC)

DRAFT

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

**Wednesday, February 13, 2019
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:10 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Gwen Allamby (Vice-Chair)
Commissioner Kitty Calavita
Commissioner Sahana Matthews
Commissioner Elisa Mikiten
Commissioner Andrea Prichett
Commissioner Ismail Ramsey
Commissioner Ari Yampolsky

Absent: Commissioner Terry Roberts

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Sgt. Cesar Melero

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of January 23, 2018

Moved/Seconded (Mikiten/Calavita) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

5. CHAIR'S REPORT

Chair Perezvelez reported that he was interviewed by a reporter for the Berkeley High School newspaper regarding SB 1421.

He plans to amend changes to the PRC enabling ordinance for the next meeting.

6. PRC OFFICER'S REPORT

-- Paul Buddenhagen, Deputy City Manager, was introduced. He recently was appointed permanently after serving as interim. Mr. Buddenhagen said a few words about himself.

-- No new complaints filed since the last PRC meeting. First BOI of this year scheduled for March 8.

-- SB 1421 legal update: 1) Judge in Contra Costa Co. ruled against unions representing county sheriffs and 6 city police depts. in the county. Denied preliminary injunction preventing release of records; stayed 10 days for opportunity to appeal. Judge found SB 1421 allows release of records pre-dating 1-1-2019. 2) State Attorney General announced that he won't release records pre-dating 1-1-2019 as he does not believe SB 1421 applies to such records.

-- SB 1421 in City: As Council decided that SB 1421 applies to pre 1-1-2019 records, the PRC Officer, BPD, and many others in City have been spending much time complying with PRA requests. Involves identifying/locating responsive records and then redacting. For requests covering long time periods, release will be on rolling basis. City is charging its usual rates.

-- NACOLE Regional Forum set for Friday, May-3. Save-the-date announcement says City is sponsor because Council permission needed for PRC to be listed as sponsor.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

-- 166 officers; really 147 not counting officers in FTO, leave, etc. Just hired 3 laterals. Lt. Hawk is retiring. Promotional ceremony coming up.

-- 100-mile challenge ended Jan. 31; undertaken as part of efforts to encourage wellness and resiliency.

-- Command staff underwent City training on preparing Council items.

-- Council has formed several policy committees including one on Public Safety.

-- Contract being submitted for Council approval Feb. 19 to hire a marketing firm develop online ads; produce website video.

-- Conducted active shooter training for Council.

-- Several officers attended funeral for Ofc. Natalie Corona in Davis.

-- Lot of time taken up lately working with others in City a response process to SB 1421.

Chief Greenwood answered questions from Commissioners.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Prioritizing Safety for Sex Workers Subcommittee – Chair Ramsey has gotten some input from Lt. Montgomery on a draft policy; PRC Officer to schedule next meeting.
- b. Lexipol Policies Subcommittee – Met today and are plowing through dozens of policies. (Request was made for full subcommittee packets to be posted to the web.)

9. OLD BUSINESS (discussion & action)

- a. Final issues in review of Lexipol Policy 425 on use of body-worn cameras, including facial recognition capabilities and update on outstanding questions from the January 23 meeting.

Discussed; PRC Officer to compile all of the PRC's recommended changes to the body-worn camera policy.

- b. Responsiveness of BPD management to PRC requests, including requirements surrounding the preparation of After-Action Reports and whether release (or withholding) of such reports or parts thereof are compliant with the Public Records Act.

Motion to send a letter to the City Attorney, with a copy to the City Manager and City Council, asking what BPD documents the PRC should have access to, in order to perform its oversight function.

Moved/Seconded (Calavita/Prichett)

Friendly amendments (all accepted by mover and seconder):

Instead of what documents the PRC should have, what is it authorized to obtain, by ordinance, statute, or otherwise.

(Ramsey)

Also, list categories of documents as examples, such as After Action reports, and source documents, and bring a draft letter back to the Commission at its next meeting for approval.

(Yampolsky)

Motion, as amended, carried

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

- c. Lexipol Policies for review and approval.

Lexipol #	G.O.	Title
312	I-15 (part); J-18 (part)	Temporary Custody of Juveniles
313	none	Adult Abuse
314	H-07	Discriminatory Harassment
315	C-08	Child Abuse

Motion to approve the above Lexipol policies.

Moved/Seconded (Mikiten/Allamby) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Ramsey, and Yampolsky.

Noes: None

Abstain: Prichett

Absent: Roberts

- d. Decide whether to proceed with former Commissioner Sherman's item stemming from BPD Response to Protests on August 5, 2018: Help BPD better understand the changing role of Black Bloc to Antifa in making protests safer, for purposes of BPD's handling of future protests to ensure safety of all participants.

Motion to close consideration of this item.

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

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

- e. Issues surrounding Commissioners' communications using personal devices and accounts being subject to Public Records Act requests, including whether Commissioners may be assigned City email addresses for Commission business.

Following discussion, Commissioner Ramsey withdrew this item.

- f. Decide whether to review the delivery of mental health services, including the role of the BPD in responding to crises involving people with mental health disabilities, and whether BPD's participation impacts the situation in the most sensible way and so the best outcome is reached.

Motion to have representatives from the BPD and Mental Health Division do a presentation to the PRC on their response to persons with mental health issues.

Moved/Seconded (Prichett/Calavita) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

10. NEW BUSINESS (discussion & action)

- a. Consider amendment to Standing Rules regarding time limits and procedures for debate.

(Heard following Item #10.c.)

Motion to adopt the proposed amendments to Section E., Meeting Procedures, of the Standing Rules, with the correction of two typographical errors.

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

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Ramsey, and Yampolsky.

Noes: Prichett

Abstain: None

Absent: Roberts

- b. Review commendations of BPD personnel October 2017 to June 2018.

Motion to accept all personnel commended for special recognition.

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

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

- c. Consider formation of subcommittee to review BPD MOU Compendium (formerly Mutual Aid Pacts Subcommittee).

(Heard following Item #10.d.)

Motion to form an MOU Compendium Subcommittee.

Moved/Seconded (Prichett/Mikiten) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

By general consent, the PRC Officer will poll the Commissioners to see who is interested in serving.

- d. Whether to request that the City Council approve the PRC's co-sponsorship of the NACOLE Regional Training & Networking event to be held May 3, 2019.

(Heard following Item #9.f.)

Motion to have the PRC Officer place an item on the City Council's agenda requesting their approval of the PRC's sponsorship of a NACOLE Regional Training & Networking Event on May 3, 2019 in Oakland, Calif.

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

Ayes: Allamby, Calavita, Matthews, Mikiten, Perezvelez, Prichett, Ramsey, and Yampolsky.

Noes: None

Abstain: None

Absent: Roberts

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

12. PUBLIC COMMENT

There was 1 speaker.

13. ADJOURNMENT

By general consent, the meeting was adjourned at 9:50 p.m.

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 1-10-19**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Lexipol Policies Formed 5-23-18	Perezvelez Ramsey Yampolsky	Perezvelez	Sgt. Samantha Speelman Capt. Rico Rolleri
Prioritizing Safety for Sex Workers Formed 9-12-18	Matthews Ramsey Calavita Julie Leftwich (public)	Ramsey	Lt. Dan Montgomery



Lee, Katherine

From: Lee, Katherine
Sent: Thursday, February 21, 2019 11:18 AM
To: Lee, Katherine
Subject: MOU Compendium Subcommittee and its charge

Dear Commissioners,

This is a reminder that at your last meeting, you voted to form a MOU Compendium Subcommittee. Chair Perezvelez asked me to ask who might be interested in serving on this subcommittee.

Some background: As explained in Article 3, Agreements With Law Enforcement Agencies, of B.M.C. Chapter 2.04, City Council: 2.04.160 -- All agreements, letters or memoranda of understanding of policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance, between the City and/or the Berkeley Police Department and all other local and state (including University of California Police Department, Alameda County Sheriff and California Highway Patrol) and federal law enforcement, military and/or intelligence agencies, police departments or private security organizations, are cancelled ninety days from April 17, 1973, unless approved by the City Council in accordance with Section 2.04.170 of this article. No funds of the City shall directly or indirectly be expended in implementation of any such agreement, understanding or policy unless the provisions of this article are complied with. (Ord. 4640-NS § 2, 1973)

Sec. 2.04.170 -- After April 17, 1973, no such agreement, understanding or policy shall be valid or effective unless specifically approved by the City Council following public hearings on the same as hereinafter provided. All terms and conditions of such agreements, understanding or policies shall be reduced to writing and presented to the City Council for approval by the Berkeley Police Department or appropriate City official, accompanied by a statement of the rationale therefor, projections of the costs of implementation, and other information or explanations requested by the council. (Ord. 4640-NS § 3, 1973)

Historically, each year the PRC forms a subcommittee to review these agreements. (It has been known as the Mutual Aid Pacts Subcommittee, but last year there was consensus that MOU Compendium is a better descriptor, as not all the agreements are about mutual aid as commonly referred to.)

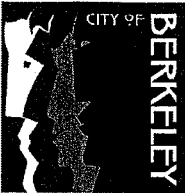
The Subcommittee determines the scope of its work. In 2012, the Subcommittee decided it would undertake a review of the entire compendium, which is comprised of close to 1000 pages of dozens of agreements. More often, however, the Subcommittee reviews any new or revised agreements (which the BPD furnishes), as well as any other MOUs it may choose to look at. In recent years, the latter category has included the MOU with the City & County of San Francisco, which disburses UASI grants, some of which are used to fund the Urban Shield exercise, and the agreement with NCRIC (Northern California Regional Intelligence Center).

The Subcommittee generally finishes its work within a couple months, so that its recommendations can be brought to the full Commission in time to be considered by the Council when BPD brings the MOUs before them. (This year, tentatively April 23, per the Chief.)

If you are interested in serving, please let me and/or Chair Perezvelez know. He will make appointments at next week's meeting. He and I are happy to answer any questions about this Subcommittee before or during the meeting.


Sincerely,
Kathy

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



Police Review Commission (PRC)

February 21, 2019

To: Police Review Commissioners
From: Katherine J. Lee, Police Review Commission Officer 
Re: PRC's recommendations on Body-Worn Camera policy

Here are recommendations you voted to make on Lexipol Policy 425, Body Worn Cameras.

Section 425.5 Member Responsibilities

Add a sentence to the second paragraph to require that verbal notification be given to anyone who is obviously visually impaired and cannot see the presence of a BWC, that the BWC is recording.

(Jan, 23, 2019 meeting)

Section 425.6 Supervisor Responsibilities

In the first sentence, add, "in any in-custody death" to the circumstances in which the on-scene supervisor shall take immediate physical custody of an involved officer's BWC.

(Jan, 23, 2019 meeting)

Section 425.11 Cessation of Recording

Revise first sentence to read:

Once activated, the member may mute or deactivate their BWC at any time, and based on their discretion in the following circumstances.

(Nov. 14, 2018 meeting.)

Revise first sentence following the listed circumstances to read:

Decisions regarding the reason for muting or BWC deactivation ~~should~~ shall be documented.

(Nov. 14, 2018 meeting.)

The above two changes to Section 425.11 were incorporated into a revised policy issued by BPD Jan. 31, 2019.

Section 425.11 Cessation of Recording (con't.)

Delete Item (d):

~~(d) In the member's judgment a recording would interfere with his or her ability to conduct an investigation.~~

(Nov. 14, 2018 meeting.)

Additionally, the Commission voted on Nov. 14 that in communicating these recommendations regarding Cessation of Recording to the Chief, the PRC Officer include research of other jurisdiction's policies on cessation.

Section 425.13 Prohibited Use of Body Worn Cameras

Revise the third paragraph, first sentence, to read:

Members may not use ~~personally owned recorders~~ recording devices other than the body-worn camera (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant ~~the use of personally owned recording devices~~ their use, such as failure of the BWC or lack of capacity.

(Oct. 24, 2018 meeting.)

Section 425.17 Review of Recordings By a Member

Revise first sentence of subsection (a) Subsection 425.17.1 Officer-Involved Incidents Resulting in Grave Bodily Injury or Death, to read:

In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the of the involved member(s) and any other recording device used to capture evidence of the incident shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary.

(Oct. 24, 2018 meeting.)

Lee, Katherine

From: Greenwood, Andrew
Sent: Wednesday, February 13, 2019 3:28 PM
To: Lee, Katherine
Subject: RE: Body-Worn Camera policy

Ms. Lee,

With regards, to your questions below:

1. Aside from the two changes, no other changes were made in the recent revision to Policy 425.
2. I don't recall specifically the circumstances that resulted in language from nearly two years ago not making it into the final policy. Of course, we've been through a *lot* of discussion, a full meet-and-confer, and developmental process since then. From an operational perspective, officers may at their discretion document contacts that they are concerned about, and they can certainly let their supervisor know if there's a contact that they think is problematic. The video exists, and if the contact becomes subject to complaint, then we'd look to the video.
3. Video or a frame capture made from a BWC could be given to NCRIC as part of a SAR, and doing so would be governed by the NCRIC policy. We are near completion of an MOU with NCRIC, and updating our NCRIC policy, and providing video or a photo as part of a SAR would be appropriate and within policy.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

From: Lee, Katherine
Sent: Wednesday, February 06, 2019 10:05 AM
To: Greenwood, Andrew <AGreenwood@cityofberkeley.info>
Subject: Body-Worn Camera policy

Hi Andy,

1. I see that a revised Lexipol 425 has been issued. I see the two changes you said would be made to Sec. 425.11 on Cessation of Recording. *Is there anything else that changed?*
2. At their Jan. 23 meeting, the PRC asked me to ask you about a change in the current policy from the BPD's April 2017 proposed policy. In 450.7 Retention of Recordings, the second paragraph stated:

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording and document the contact appropriately.

No similar language is in current 425.14. *Are you able to explain why?*

3. Also on Jan. 23, the PRC had a concern about 425.18, Release of Recordings, second paragraph, which gives BPD authority to share video with law enforcement, national security, etc., when there is a reasonable suspicion that criminal activity has occurred or is about to occur. *Does this mean video could be shared as part of a SAR to NCRIC, and can we assume that any such video-sharing will comply with the guidelines in the NCRIC policy?* There was some discussion about recommending the addition of some language about this compliance in the BWC policy but then the commission thought it would like your take on this.

Thanks,
Kathy

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

Lee, Katherine

From: Lee, Katherine
Sent: Friday, December 14, 2018 3:00 PM
To: Lee, Katherine
Subject: Body-worn camera stuff
Attachments: Axon Body 2 October Roll-Out.pdf; P-64 Digital Evidence.pdf

Dear Commissioners,

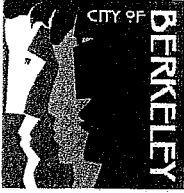
At the Dec. 12 PRC meeting, the commission reiterated its request to Chief Greenwood for operating manuals and training materials for the BWC and iPhone. As to training materials, the Chief said he would see if the PowerPoint the PRC received after the Dec. 2017 demo was the same as the one the officers got. Yesterday, he provided me with the attached.

At the meeting, the Chief responded in part to the concerns about non-BWC audio and video evidence by pointing to G.O. P-64, attached. See sections 8 – 12 of P-64 (which will become Lexipol 807). He also said Lexipol 701, on use of personal recording devices, is being worked on.

Finally he said a couple (few?) tweaks are being made to the BWC policy soon, including deletion of “and” in the first sentence of 425.11, Cessation of Recording.

-Kathy

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



Police Review Commission (PRC)

November 30, 2018

To: Chief Andrew Greenwood
From: Katherine J. Lee, ^{AK} Police Review Commission Officer
Re: Questions and request regarding policies on use of the iPhone associated with body-worn cameras

As you know, the Police Review Commission has been reviewing Lexipol Policy 425, issued on September 28, 2018, governing use of the recently-deployed body-worn cameras (BWC). You are also aware that, following the Berkeley Police Department's work with the PRC in formulating a BWC policy, the PRC had not seen a draft policy from the BPD since April 2017; and that the subsequent BWC hardware and software purchases included an iPhone for using the Axon View and Axon Capture applications.

You informed the PRC that those iPhone applications can be used to review BWC video, independently record video and audio, and take photographs. Very little of Lexipol Policy 425 applies to the iPhone, however. This raises for the PRC many concerns about the apparent lack of written guidelines for use of the BWC-associated iPhone and the review and handling evidence collected by such use.

With respect to body-worn cameras, Lexipol Policy 425 sets forth rules for, among other things:

- 1) When the BWC must or may be used;
- 2) When its use must be documented;
- 3) How video evidence captured with the BWC is preserved;
- 4) When officers may review the video, with a separate provision for officer-involved incidents resulting in grave bodily injury or death.

With one exception, the BWC policy does not regulate use of the BWC-associated iPhone for taking photographs or recording audio or video, or handling of the evidence recorded with that iPhone, nor does there appear to be any other policy that does so.

The exception is found in Lexipol Section 425.13, which prohibits officers from retaining, duplicating, or distributing "BWC recordings"; this seems to apply to BWC recordings viewed on the iPhone. In that same section, officers who use a

recording device aside from or in addition to their BWC, must document and explain such use, but because the section expressly refers to personally-owned recorders, it is unclear whether the requirement applies to recordings made with the iPhone issued by the City to accompany each BWC.

Thus, the PRC is concerned with the seeming lack of a cohesive and comprehensive policy covering use of the BWC-associated iPhone to record evidence, and the subsequent handling of that evidence. Specific questions include:

- In incidents resulting in grave bodily injury or death, the BWC is taken from the officer and secured. Is the iPhone taken as well?
- In such incidents, the officer is not to view video before giving a statement. How is an officer prevented from viewing the video on his/her iPhone?
- According to your February 12, 2018 memo, items uploaded from Axon Capture to evidence.com are subject to the same evidentiary standards as video collected from BWCs. Is that requirement contained in a written policy? Is there a requirement to upload *all* photos, audio, and video recordings taken or made with the iPhone?

The PRC requests that these questions be addressed by the issuance of a written policy (or amendment to existing policy) that will govern the use of photographs and audio and video recordings captured by the BWC-associated iPhone.

The Commission voted unanimously at its November 14, 2018 meeting to ask these questions of you and for a written policy to address them. (M/S Sherman/Matthews; friendly amendment Calavita: Ayes – Calavita, Matthews, Prichett, Ramsey, Roberts, Sherman, Yampolsky; Absent – Allamby, Perezvelez.)

Thank you for your consideration of this request.

cc: Paul Buddenhagen, Interim Deputy City Manager
PRC Commissioners

From Commissioner Matthews

“Guiding Principles”

The Berkeley Police Review Commission (PRC) was established in order to strengthen trust between the BPD and Berkeley community. The PRC would like to emphasize our role in collaboration with the Department to reach this shared goal of trust.

Due to the current Berkeley Police Department (BPD) staffing crisis, the PRC adopts these guiding principles as a way of ending the lack of support that the Department receives from the PRC.

In order to strengthen the relationship between the BPD and PRC, the commissioners will:

- Make every effort to ask for Department input during discussions on items that affect Department policies and practices.
- Attend community and Department events that the Chief invites the commissioners to.
- Participate in ride-alongs and Department tours (to the extent the commissioners feel comfortable).
- Support the Department's staffing by reaching out to our community networks (to the extent applicable).

It is the Commission's hope that these principles will be followed in a way that promotes a better relationship between the PRC and Department and increases trust between the BPD and broader community.

From Commissioner Perezvelez

In order to strengthen the relationship between the BPD, BPOA and PRC, the commissioners will make every possible effort:

- To ask for Department and Union input during discussions on items that affect Department policies and practices.
- Attend community and Department events sponsored by the BPD
- Participate in ride-alongs or Department tours on a yearly basis
- Continue to adhere to NACOLE Code of Ethics in all interactions with the Department and Union
- Support the Department, within the oversight mission, in interactions with City Council and City Manager in all matters related to staffing, equipment and community outreach.



NACOLE CODE OF ETHICS

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when a significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

Subject **RE: HIT AND RUN AT DURANT AND TELEGRAPH**
From Elgstrand, Stefan <SElgstrand@cityofberkeley.info>
To <beneficialbug@sonic.net>
Date 2019-02-13 16:46

Here is the response that the City Manager provided the day after the incident. I would reach out to BPD (510-981-5900) if you have further inquiries:

BPD was able to locate this incident on their mobile system. The incident occurred at about 12:09 yesterday afternoon at the intersection of Telegraph and Durant. Several officers immediately responded to the report of a collision between a vehicle and a pedestrian at that location.

The preliminary summary of what appears to have happened is this... A male about 20 years old was driving his parents' car north on Telegraph Ave, uninvolved with the protest. He drove up behind what he described as a large group of people who were walking in the middle of the street and appeared to be protesting. According to the driver, at least two or three people from the group turned towards him unprovoked and began hitting his car, throwing food on it and threw beverages at it as well. He said they continued to attack his car by hitting the doors and front end. He decided to attempt to drive away from the attack by (incorrectly) turning west on Durant Ave (the wrong way) where he was blocked in and felt he was still under attack. He chose to drive up on the sidewalk to escape the area. He reports that he did not know that he hit the foot of the person located on the sidewalk or a bike belonging to another person in the group. He continued driving on the sidewalk and escaped the area.

BPD officers have identified 14 witnesses at this point. From what I've read, it appears that almost all of their statements indicate that pedestrians/protestors were attacking the vehicle before it drove away on Durant. From what I can tell, besides the cell phone video sent by Councilmember Davila, it appears officers recovered security video from at least one business that captured all or some of this incident. The officers were able to obtain the license plate of the vehicle and tracked down the vehicle owner (the driver's father) who reports at least \$2,000 worth of damage to his car. He advised his son told him about the attack and did not report hitting anyone or anything. He took his son back to the scene to see if they could locate the people who damaged his vehicle with no luck. He was preparing to call BPD when he received a call from one of our officers.

The man who was lying on the sidewalk, hit by the vehicle, was transported by BFD to Alta Bates. At this point in the report, he is reported to have abrasions to his foot. There is no other report of injuries and no report of broken bones. Although he is blind, he reports he could hear protestors "attempting to stop a vehicle" and "a protestor was vandalizing a vehicle." He reports the vehicle ran over both of his feet.

Stefan Elgstrand
Assistant to the Mayor
Office of Mayor Jesse Arreguin
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
(510) 981-7103 phone
(510) 981-7199 fax

SElgstrand@cityofberkeley.info
www.jessearrequin.com

Sign up for our monthly newsletter.

From: beneficialbug@sonic.net [mailto:beneficialbug@sonic.net]
Sent: Friday, February 01, 2019 2:07 PM
To: Jacquelyn McCormick <robleroad@gmail.com>; James Mcfadden <jpmcfadden925@yahoo.com>; Sustainable Berkeley Coalition <sustainable-berkeley-coalition@googlegroups.com>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Manager, C <CManager@cityofberkeley.info>; Wengraf, Susan <SWengraf@cityofberkeley.info>; Bartlett, Ben <BBartlett@cityofberkeley.info>; Hahn, Sophie <SHahn@cityofberkeley.info>; Kesarwani, Rashi <RKesarwani@cityofberkeley.info>; Davila, Cheryl <CDavila@cityofberkeley.info>; Harrison, Kate <KHarrison@cityofberkeley.info>; Droste, Lori <ldroste@cityofberkeley.info>
Cc: Berkeley-Disabled <Berkeley-Disabled@yahoogroups.com>; Andrea Prichett <prichett@locrian.com>; People's Park Committee <peoples-park-committee@lists.sonic.net>
Subject: Re: HIT AND RUN AT DURANT AND TELEGRAPH

To all whom I hope will be concerned:

I just noticed the time; it's 72 hours since I sent this letter and have received NOT ONE response from any city people, not one acknowledgement of receipt which one would think would be forthcoming when many have been threatened, and one human being named Tony was run over by an out-of-control person wielding a weapon (a car) against people.

Please acknowledge receipt of this and let me know you received it earlier this week.

Thank you.

Sincerely,

Max Ventura

Maxina Ventura
Classical Homeopathy for the Whole Family
WiseWomanHealth.com

On 2019-01-29 14:04, beneficialbug@sonic.net wrote:

To all whom I hope will be concerned:

Tuesday, 3/22/19, the day of the march in protest of decimation of healthy trees in People's Park, maybe 40 of us gathered and headed out of the park to go down Telegraph to UC first day of classes, to let people know what had occurred. We had two massive banners, one at the front, and one at the back of the march. It was a perfectly peaceful march until a young driver for whatever reason (entitlement? Out-of-control and not fit to be on the road? Perhaps drugged?) headed into the

back of the march at the intersection of Durant and Telegraph. Suddenly, I heard shouting such as, "What the hell are you doing?" and "Stop! Stop!". Our little march was a bit spread out and I was maybe in the front third. I was maybe 50 feet north of Durant. Obviously, something bad was happening and I tried to get to the intersection as quickly as possible. I was trying to get down the sidewalk full of students and others so I did not witness him driving into Jake's bike and totaling it, but once I got back to the NW corner of Durant and Telegraph, I heard Tony howling in pain. Jake came up from the curb cut and said this guy had rammed into his bike and that, he'd had to jump out of the way to avoid being run over himself. His bike was completely mangled. The fork of the bike was bent far out of shape, as was the front wheel, which clarified the speed/velocity of the driver in the car. Jake was holding part of the car's fender which had fallen off after the driver smashed the bike.

When I had turned from where I was north of the intersection, I saw this driver stopping and starting (like a bucking bronco) and then I saw him turn the wrong way onto Durant. By the time I got closer to the intersection I saw the driver hop the curb and then when I got to Durant I saw people trying to block this person after he'd driven over Tony's feet. They were yelling at him to stop, and people were yelling, "Get his license plate number!" Finally, this out-of-control driver succeeded in careening down the street wrong way, past anyone trying to stop him.

Several of us stayed around well past Tony being taken by ambulance. We were trying to give witness statements and most of the cops there were beyond uninterested. I was stressing the out-of-control aspect of this driver's actions. Totally impatient with a little march (probably 40 of us). I was pointing out that when I taught my 3 young people to drive I stressed again and again that if something's going on, just pull over and cool out before ever getting on the road again.

I waited and waited to give a witness statement. Let me stress here that, these cops were not calling out anything such as, "If you witnessed, please stay and give us a statement." I basically had to foist myself upon them to get them even to take a statement. **I cannot emphasize enough that though there were a few around, they were not actively trying to take statements, only relenting when people said we needed them to take our statements.** But in what I saw that Jacquelyn McCormack sent out, you'd have no way of knowing what went on, in spite of people trying to get info to the people who are supposed to be taking statements. There was a sense of hostility from the cops. Someone had just been run over and they didn't want to be bothered.

I was giving a statement to two cops, and the one said in a harsh way, as though to be interrogating me, someone who'd waited around for quite awhile to give a statement, something like, "What's your contact info?" I gave him my business card which has on it my phone number and my website info. He demanded my address. You tell me why he would need that? But I have nothing to hide, so gave it, and he walked away as I was trying to give them both my statement.

Here's what struck me:

- They showed zero compassion about Tony
- They showed zero compassion about Jake losing his means to his work
- They showed zero interest as I talked about witnessing this person stopping and starting, bucking, obviously out of control
- They showed zero interest in my describing seeing this guy jump the curb, though I did not witness him actually running over Tony since there were so many people on the sidewalk at that NW corner of the Durant intersection. Tony was sitting on the ground, but I could see the car as the driver was speeding across the sidewalk before jumping back into the street (wrong direction)

- They showed zero interest in listening to Jake as he described how he would have been run over, too, had he not jumped out of the way. He tried to hand the cop the piece of the car fender which had fallen off when the driver smashed into his bike. He certainly showed zero compassion for Jake's distress over losing his means to working for his job

The one who stayed around when the other one had walked off after interrogating ME about my address, showed zero interest in hearing my description of this driver being obviously out of control, and even less interest as I tried to get him to understand this from a mother's point of view. I explained that, as a person who's taught my children basic driving skills, I feel it's important to stress that this person made every mistake on the books, completely totaling the bike of someone who uses it for his work (and lucky that guy jumped out of the way), and more importantly careening over a sidewalk and running over a human being's shins/feet. Tony was in dire pain, moaning, howling in pain. And this guy careened down Durant the wrong way once he drove back off the sidewalk.

- HOW DO I COME TO THE CONCLUSION THERE WAS NO INTEREST? IN SPITE OF MY EXPLAINING WHY IT WAS IMPORTANT TO INCLUDE NOTES ABOUT WHAT I EXPERIENCED AS A PARENT WHO'S TAUGHT KIDS TO DRIVE, AND WHAT I SAW BOTH FROM ABOUT 50 FEET AWAY, AND THEN FROM THE NW CORNER AND THEN RIGTH BY TONY, HE TOOK NEXT TO NO NOTES, AND AS FAR AS I COULD SEE, DID NOT TAKE MY NAME. THE OTHER ONE DID BUT WALKED OFF, BUT IF THEY ACTUALLY INTERVIEWED 14 PEOPLE, ARE THEY GOING TO MATCH NOTES ABOUT WHICH NAMES GO WITH WHICH STATEMENTS? HE WAS TOTALLY DISMISSIVE AND YOU MIGHT ASK HIM WHY. NO STATEMENTS ON PAPER ALLOW A COMPLETELY OUTRAGEOUS REPORTING AND THEN ACCEPTANCE BY THE CITY. YOU NEED TO KNOW WHAT YOU'RE WORKING WITH HERE

No wonder other city people have no clue what happened. Yes, Tony is black and homeless and disabled. Apparently some of those who run this town see him as expendable, because that is how at least a couple of the cops acted, and how dismissive some city people were when they got a report. A younger cop seemed to be trying to take down some notes from some others, but if he wrote anything that told the story of what actually had gone on, it seems not to have been included. And nothing from my statement was included in what went out to city people. The idea of collecting witness statements is to put together a full picture of what occurred. The cops were completely negligent, and some apologist parent is helped to let his out-of-control son apparently get completely off the hook.

- PLEASE INTERVENE AND DO NOT LET THIS KID JUST WALK AWAY. THE DAD BLAMING OTHERS FOR DAMAGE TO HIS CAR? WOW! MAYBE MAKE THE KID PAY FOR THAT \$2000 THE DAD SAYS IS THE COST OF DAMAGE

Consider that THE DAD MADE TIME THAT VERY DAY TO GET THE CAR ASSESSED FOR DAMAGE COST BUT APPARENTLY, HAS NO INTEREST IN THE PEOPLE HIS SON HAS DAMAGED

- PLEASE DO NOT LET THIS BE THE OUTCOME OF SUCH GREAT ENTITLEMENT. WE DO NOT WANT THIS KID ON THE ROAD. HIS LICENSE SHOULD BE YANKED, ANGER MANAGEMENT THERAPY SHOULD BE ORDERED, AND THE FAMILY NEEDS TO TAKE CARE OF THE DAMAGED INDIVIDUALS. TAKE RESPONSIBILITY FOR YOUR SON, Mister

So many disabled people are hit in this town by drivers texting, altered by Wifi and GPS/WLAN (here's an excellent short video of an experiment from Mainz University in Germany: <https://vimeo.com/244746945>) and in this case who knows what other factors are at play, but the father's reaction as reported makes very clear that, he believes his son, and

apparently cannot imagine his son doing anything bad, or is a complete enabler of his son doing anything he pleases

Some of the powers-that-be seem to be conspiring NOT to look at the truth, and NOT to hold accountable an out-of-control young person who runs over a human being and then does what? Blames people for marching to demand an end to the decimation of the trees in a park? We've had decades of trying to hold off the university's disingenuous moves to encroach on the park, the needed green space and meeting space of thousands over decades (we're hitting 50 in April). Just as a reminder, UC owns a lot of Berkeley and has many places to plunk down YES... needed housing. It does not have to be there, just like their tennis courts didn't need to be there (and are a block away), just like their volleyball courts were not wanted by actual users of the park (UC PAID UC students to play volleyball there in '91 as no one else would. They wanted media saying it was needed. Eventually, we succeeded in getting the world's biggest litterbox out of the park.

The lie UC keeps stating is many decades old: students don't use the park. When I hear anyone say that, I know they are unlikely ever to have set foot in the park. Because students are out there all the time enjoying the grass, the sun, the shaded areas (so much less shade now).

Let me register here that, I am completely offended at the negligence and at the seeming lack of any compassion for a lot of people threatened with harm, with one whose work life is harmed and could have massive emotional harm at being so nearly run over himself, and above all for a person already facing really tough circumstances (he's homeless, he's disabled, he's black) who was run over, was in tremendous pain, and while he was turned back out onto the streets from the ER, probably will suffer longterm soft-tissue damage which could further complicate his life.

Sincerely,
Maxina Ventura
2304 Roosevelt Ave. #4
Berkeley 94703 900-1160

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Maxina Ventura
Classical Homeopathy for the Whole Family
WiseWomanHealth.com





February 15th, 2019

To: Dee Williams-Ridley, Berkeley City Manager (manager@CityofBerkeley.info)

To: Mark Numainville, Berkeley City Clerk (clerk@CityofBerkeley.info)

CC: Farimah Brown, Berkeley City Attorney (attorney@CityofBerkeley.info)

CC: the Honorable Jesse Arreguin, Mayor of the City of Berkeley (mayor@CityofBerkeley.info)

CC: Rashi Kesarwani, Cheryl Davila, Ben Bartlett, Kate Harrison, Sophie Hahn, Susan Wengraf, Rigel Robinson, Members of the Berkeley City Council (Council@CityofBerkeley.info)

CC: George Lippman, Chair, Berkeley Peace and Justice Commission (george@igc.org)

CC: Shallon Allen, Berkeley Peace and Justice Commission Secretary (SAllen@CityofBerkeley.info)

CC: Sahana Matthews, Chair, Berkeley Police Review Commission

CC: Katherine Lee, Berkeley Police Review Commission Secretary (prc@CityofBerkeley.info)

CC: Berkeleyside (editors@Berkeleyside.com, emilie@berkeleyside.com), Berkeley Daily Planet (news@BerkeleyDailyPlanet.com), Darwin Bond-Graham (darwinbondgraham@gmail.com)

CC: Matt Cagle, Technology and Civil Liberties Attorney, ACLU of Northern California (mcagle@aclunc.org)

CC: David Maas, Senior Investigative Researcher, Electronic Frontier Foundation (dm@eff.org)

CC: JP Massar, Tracy Rosenberg, Christopher Jasinski, Christina Rosalita, Mike Katz-Lacabe, Lou Katz, Susan Harman - Members, Oakland Privacy.

Subject: Berkeley Ordinance No. 7,592–N.S., Acquisition and Use Of Surveillance Technology. Alleged Violation Notice.

On March 27th, 2018, Berkeley City Council enacted into law Berkeley Ordinance No. 7,592–N.S.,¹ a Surveillance Equipment regulation ordinance.

Oakland Privacy, a citizen's coalition that works regionally to defend the right to privacy and enhance public transparency and oversight regarding the use of surveillance techniques and equipment, was an active participant in the creation of this ordinance, which was vetted in draft forms by Berkeley's Peace and Justice Commission, Berkeley's Police Review Commission, the Berkeley City Attorney and various members of the City Council.

Section 2.99.050 of that ordinance states (bolding added):

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018, a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of this ordinance.

The City Manager did not do this, in violation of the ordinance, consequently the City of Berkeley has been in violation of its own ordinance for more than three months.

Section 2.99.090 of the ordinance states:

The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction.

Please consider this letter written notice of the aforementioned violation by Oakland Privacy and the signatory individuals. The City Clerk will have been served per 2.99.090 as of the date of this letter.

This is a formal request to cure and correct. We look forward to an acknowledgement that the alleged violation has been substantiated, per 2.99.090 (“*If the alleged violation is substantiated...*”), and subsequently cured by having an Acquisition Report and a proposed Use Policy for each surveillance item possessed by the City of Berkeley be placed on the City Council’s agenda forthwith for their consideration.

Thank you.

James Massar (massar@alum.mit.edu), 510 883 0580
Tracy Rosenberg (tracy@media-alliance.org)
Christopher Jasinski (jasinski.christopher@gmail.com)
Christina Rosalita (christinarosalita@gmail.com)
Mike Katz-Lacabe (mkatz@mikesbytes.com)
Lou Katz (lou@metron.com)
Susan Harman (susanharman1@gmail.com)

Members of, and on behalf of, Oakland Privacy.

ⁱ <https://www.berkeleyside.com/wp-content/uploads/2018/03/2018-03-27-Item-02-Ordinance-7592.pdf>

Lee, Katherine

From: Arreguin, Jesse L.
Sent: Wednesday, February 20, 2019 12:02 PM
To: Greenwood, Andrew
Cc: Williams-Ridley, Dee; Lee, Katherine
Subject: Great Work!

Great work Chief to your Department in getting these guns off the street. They could have seriously harmed our residents and police. Please pass along my deep thanks to the staff involved in this operation for their efforts to keep our community safe.

<https://www.berkeleyside.com/2019/02/20/berkeley-police-seize-firearm-stash-armor-piercing-bullets-in-warrant-search>

Jesse Arreguin
Mayor
City of Berkeley
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
Office: (510) 981-7100
www.jessearreguin.com



Oakland's Lost Year of Police Accountability

In 2018, The Town's new police commission stumbled badly in a power struggle with other city officials, and itself. Can it recover?

By Darwin BondGraham @Darwinbondgraha

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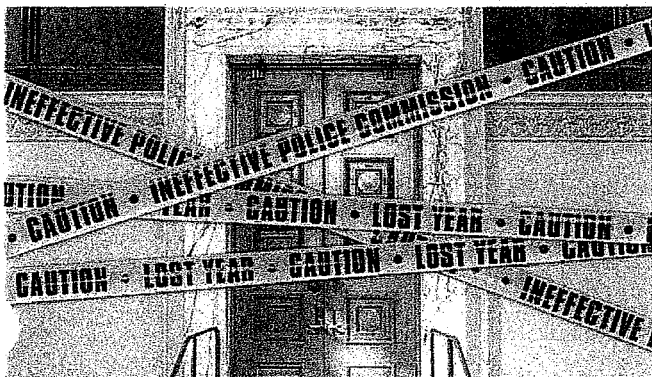


Photo and design by Paul Haggard

Later this month, Oakland will mark an unfortunate anniversary when its police department enters its 17th year under the oversight of a federal judge. Called the Negotiated Settlement Agreement, or NSA, the sweeping court oversight program was the outcome of a civil rights lawsuit filed in 2000 that exposed racial profiling and brutality committed by a squad of Oakland cops known as "The Riders."

Originally, the NSA was only supposed to last five years. Once OPD completed a list of mandatory reforms, a federal judge would hand control over the police department back to the city. But OPD has repeatedly failed to complete the NSA's requirements, as new police scandals have burst into the headlines and the city has rotated through four mayors, eight city administrators, and seven police chiefs.

The cascade of scandals included the callous and fatal beating of Jerry Amaro by several narcotics officers in 2000. As if to underscore OPD's inability to hold its own accountable, the Amaro case was covered up by a lieutenant who, by 2010, was promoted to captain of internal affairs.

In 2003, a deployment of officers battered protesters and longshore workers at the Port of Oakland during an antiwar protest, leading to another civil rights lawsuit and imposition of new "crowd control" policies.

In 2009, 11 officers were accused of falsifying information on search warrant applications. The warrants scandal resulted in yet another

costly lawsuit as well as the dismissal of dozens of tainted criminal cases.

In 2011, a heavily armed deployment of Oakland cops again attacked protesters during Occupy, including the wounding of Iraq War vet Scott Olsen, who was shot in the head by an OPD officer with a beanbag shotgun round while another officer lobbed a flash-bang grenade at a group helping Olsen.

While these and other scandals periodically erupted, controversial and fatal police shootings continued. In most cases, officers gunned down young Black men, a few of whom — like Derrick Jones and Mack "Jody" Woodfox — were unarmed.

Then there was the 2016 "Celeste Guap" sex exploitation scandal. The attempted cover-up caused Thelton Henderson, the federal judge overseeing the NSA at the time, to remark in an order that the department's behavior called into question its ability to comply with the NSA.

But the sex exploitation scandal pushed Oakland's elected officials to embrace something they'd previously resisted: an independent police commission. In 2016, the city council, in an effort led by Councilmembers Dan Kalb and Noel Gallo, voted to put a measure on the November ballot to establish the commission. Voters seized on the idea as a way to finally create an accountability mechanism for the long-term — after mayors, administrators, and police chiefs come and go, and after the NSA ends. Indeed, the commission was sold as an institutional force that could help OPD reach compliance with the NSA. Voters gave the new commission, which has the power to investigate misconduct and shape department policies, a stunning mandate with a vote of 83 percent.

Yet despite this overwhelming support, this past year, the commission's inaugural, was marked by confusion and conflict.

Already, two of the best-qualified commissioners have resigned, one of them in frustration. In November, the commission suddenly and secretly fired its chief investigator after publicly clashing with him. Commissioners have also quarreled during public meetings with their legal counsel, and their first attorney quit after commissioners argued with her at meetings. The commissioners have also bickered amongst themselves, sometimes over email and text message, sometimes in public. And lacking experience with state open meetings laws, at least one of the commissioners committed a Brown Act violation in the form of unnoticed emails sent to a quorum of other commissioners.

Over the past year, the commission hasn't made progress on the core work required of it under the city charter. They've yet to hold a single hearing in a police disciplinary case or participate in an OPD Executive Force Review Board to examine a shooting or similar critical incident. They're ill-prepared to draft their evaluation of the police chief. They've yet to hold a community meeting.

Now, there's even controversy over whether the police commissioners are allowed to view the contents of the police misconduct files prepared by their own investigators.

They've also yet to successfully draft a single policy for OPD. They lack an inspector general, a key staff position under the commission's supervision that is similar to an auditor. The inspector general has the

1991



authority to review OPD's existing policies and procedures and recommend improvement, but the job hasn't even been posted yet on the city's hiring website.

In sum, the commission is a mess. But the commission's supporters are by no means ready to call it a failure. Quite the opposite.

"It's not a shocker that a commission of this high profile will have some bumps along the way," Kalb said in a recent interview. "I remain very hopeful."

Kalb said the commission will eventually fulfill its mission as a powerful institution. But he added that the city council likely will need to consider some modifications to and clarifications of the commission's authority in 2020 when another ballot measure can be put before voters.

Rashidah Grinage, one of the police accountability activists who was a driving force in the creation of the commission, is also hopeful, despite being one of the commission's harshest critics in 2018.



File photo by Stephen Teixeira

Rashidah Grinage remains optimistic about the commission.

"There's every reason to be doom and gloom about this first year," Grinage said. "But I personally don't want to contribute to the negativity. The worst is behind them, and it can only get better from here."

But that might not be true. The worst of it might still be ahead. There are major conflicts between the commission and other city officials that have only started to manifest. And it's almost assured that 2019 will be another tumultuous year for the commission, regardless of whether its members can carve out more resources from the city administration and organize themselves more effectively.

At the police commission's first meeting on Dec. 13, 2017, commissioners and activists complained that the commission hadn't been provided adequate staff and other resources. They faulted Oakland City Administrator Sabrina Landreth, accusing her and Oakland Mayor Libby Schaaf of neglecting the commission. Some activists even believe the mayor and city administration are trying to sabotage the commission. The perception that Landreth, in particular, is hostile to the commission has only grown over time.

Landreth and her spokesperson Karen Boyd didn't respond to a request to be interviewed for this report. Landreth also has never made a public

statement in support of the police commission. On the contrary, at a city council meeting last year, she spoke critically of the commission and criticized a vote by the city council that sought to empower the commissioners and increase their independence from her office.

Schaaf, on the other hand, has publicly praised the commission, and she appeared at one commission meeting this past year. However, Schaaf's spokesperson Justin Berton said the mayor wasn't available to be interviewed for this report.

Last week, Schaaf and Police Chief Anne Kirkpatrick said during a press conference that their primary public safety objective is reducing crime. When asked by an *East Bay Times* reporter if complying with the NSA is equally a priority, they responded, "Yes." But then Kirkpatrick reiterated that when Schaaf hired her two years ago, it was because Kirkpatrick "had one goal: to reduce crime and violence."

Henry Gage, a member of the Coalition for Police Accountability who has attended almost every commission meeting, told the *Express*, "We met with the mayor a while back to see where she was at in terms of her support for the commission. I was surprised by how little attention she was paying."

Gage said Schaaf seemed unaware of the problems the commission has faced, including the perceived neglect from Landreth's office. "It's concerning," Gage said, "because back in 2016, Schaaf was talking about rooting out corruption and this macho toxic culture [in OPD], so you'd think she'd still be spending more time on that."

While the city council approved a \$2.3 million budget for the commission's first year, including a staff of seven investigators, the chief investigator, a policy analyst, and five office staff, most of these positions were transferred over from the old Citizen's Police Review Board. To fill two empty administrative roles that were key to getting the commission up and running, Landreth appointed a part-time staffer from her office.

Stephanie Hom, the Landreth staffer filling this role, said during the commission's first meeting that new staff hadn't been hired for the commission because the city's hiring process is slow.

At subsequent meetings, Hom and the commissioners clashed over how to best fill the commission's most important staff position. The commissioners requested that recruitment for the executive director of the new Community Police Review Agency (CPRA) — essentially the commission's lead police misconduct investigator — be expedited. Hom agreed to quicken the process, but then told the commissioners it would take time to hire someone and added that the job wouldn't be posted anywhere publicly. When asked by commissioners if they could directly advertise the job and receive queries from interested parties, Hom told them "I can't answer that question."

The job was eventually posted, but it remains unfilled while a CPRA investigator is serving as the interim director.

Of greater concern than staffing issues to the commissioners, however, was the commission's launch without any orientation or trainings. The council appropriated \$293,533 for trainings and other startup support, but as 2018 came and went, the commissioners received few relevant trainings. In fact, they were never provided with any kind of orientation prior to their first meeting.



"We needed resources for our ramp up," said police Commissioner Maureen Benson in a recent interview. "We needed immense amounts of training those first few months. A lot of this still hasn't been done. There were processes that could have been put in place to help us map out a work plan."

Andrea Dooley, an alternate commissioner who resigned in November, said, "Once we were selected, months passed and we didn't get any support or training. We were never introduced to the city attorney or administration. We were selected, sworn in, given the commissioner's handbook by the city clerk, and then it was just like, 'show up for your first meeting.'"

The commission's lack of training and the inexperience of most of the new commissioners with how to conduct a public meeting quickly became obvious. Benson said that because the commissioners hadn't been provided a retreat or other venue to talk about various ways they could organize the commission and run its meetings, it unfortunately fell into what she called a "hierarchical government model."



Photo by Darwin BondGraham

Police Commission chair Thomas Smith has come under fire for his decisions.

"People fell into patterns of 'this is the way we should do things,'" she said. "We ended up replicating problems."

One consequence was the dismissal of a proposal by Commissioner Mike Nisperos at the first meeting to possibly rotate the position of commission chair. Instead, the commissioners voted to appoint Thomas Lloyd Smith as chair and Ginale Harris as vice chair.

When the *Express* requested an interview with Smith for this story, he asked for a list of questions before agreeing. After I sent him some questions in an email, Smith declined to be interviewed. Harris didn't respond to an interview request.

Smith has a sparkling résumé, including having graduated from Harvard Law School, but he fumbled badly as chair during some of the commission's early meetings. Votes were taken improperly; public comment was skipped over. During one meeting, Smith refused to allow the alternate commissioners to sit at the dais with the full commissioners and join in discussion. Later, after requesting legal advice from the commission's attorney, he relented and allowed the

alternates to sit with their fellow commissioners, but the episode had created a sour atmosphere.

In March, Smith made another mistake by appearing at a West Oakland scene of an officer-involved shooting and speaking to the media. Members of the Anti Police-Terror Project, an activist group skeptical of the police commission from its inception, denounced Smith for what they characterized as an appearance and statement that only parroted OPD's talking points.

Smith was also criticized by his fellow commissioners who said his behavior jeopardized the commission's role as a neutral factfinder. If at a future date, the commission decided to hear evidence about the shooting and possibly impose discipline on an officer, Smith's appearance and public comments at the scene could imperil that. It made him a witness to the aftermath of the incident and less an objective official to hear evidence.

"You need to stay neutral while your investigative agency goes to the scene," Mary Vail, a member of the Coalition for Police Accountability, told the commissioners at their meeting immediately following the shooting.

But at the time, the commission was nowhere near being ready to conduct a discipline committee hearing, should one arise from an earlier incident like the shooting in question. It was only in October that an ad hoc committee of the police commission first presented a plan to train all of the commissioners on how to conduct a discipline committee process, with trainings only then being scheduled.

Tellingly, it was up to the commissioners themselves to organize these mandatory training sessions to prepare them for their most fundamental duties. They received very little assistance from Landreth and the city administration.

Part of the reason for the commission's chaotic start was a missing crucial piece of legislation known as the "enabling ordinance" that spells out the commission's responsibilities and powers in detail. Without the enabling ordinance, the commission lacked a work plan, and it couldn't make progress hiring some of its key staff, especially the inspector general, a position that was created in the enabling ordinance rather than Measure LL.

Although councilmembers Kalb and Gallo introduced a draft of the enabling ordinance in January 2017, the city council didn't approve a final version until July 2018. The lengthy, 18-month delay was partly due to City Attorney Barbara Parker's opinion that the city needed to meet and confer with the Oakland police union about the ordinance.

Grinage and the rest of the Coalition for Police Accountability believe that the city didn't need to spend nearly a year in private talks with the Oakland Police Officers Association about the enabling ordinance. "The fact that the city took as long as it did to pass the ordinance was a problem," she said.

Grinage noted that state law requires cities to meet and confer with their employee unions when they consider changing wages, hours, and other terms and conditions of employment. "I couldn't imagine any aspect of the ordinance that touches on those features," she said.

But the ordinance was also delayed due to numerous disagreements among councilmembers, activists, and police commissioners over details buried in it, the full implications of which are still unclear. The biggest disagreements regard how much power the city administrator and city attorney have over key commission staff positions.

City Attorney Parker didn't respond to an interview request or a set of emailed questions sent to her and her spokesperson Alex Katz for this story. But Parker's deputy attorneys have made the point repeatedly in public meetings that under Measure LL and the city charter, legal advisors to the CPRA and to the police commission will be appointed by Parker, and she's only required to consult with the commission about who to pick. Parker hired an outside attorney to argue this point during a city council meeting last July, after it became apparent that some councilmembers wanted to give the commission direct and sole authority to hire its own legal counsel.

Karen Getman of the Remcho Johansen & Purcell law firm told councilmembers at their June 20 meeting that "the city attorney is the only attorney for the city," and "city boards and commissions don't have any independent authority to appoint their own advisor."

The final enabling ordinance conformed with this view, but some believe this creates a potential conflict of interest in that the legal advisor to the police commission, which is tasked with uncovering police misconduct, is appointed by and can be fired by the city attorney. At the same time, the city attorney defends cops when they're sued for misconduct and is generally responsible for protecting the city against the exact kinds of scandals the police commission and its investigators will be attempting to uncover.

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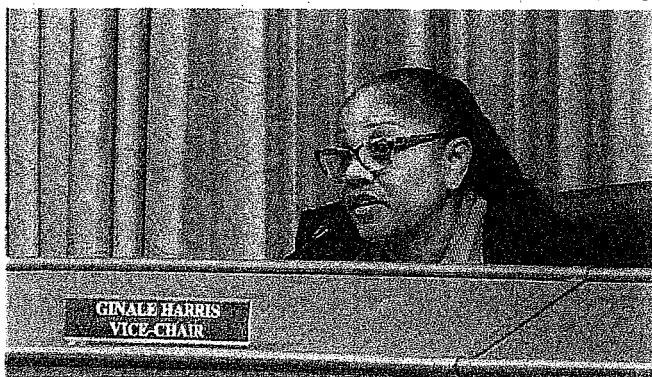


Photo by Darwin BondGraham

Harris has clashed with the city administration and commission staff.

An even bigger rift opened up over the question of who has the power to appoint the commission's inspector general. Landreth and Parker have both argued that because Measure LL didn't amend the city charter to give the commission the power to hire and directly supervise the inspector general, then the job, by default, is controlled by the city administrator. They further argued that the enabling ordinance can't change this fact. Only another amendment to the city charter through a ballot measure can.

At the city council's June 20 meeting, when the police commission's enabling ordinance was up for its first vote, Councilmember Rebecca Kaplan remarked that she found this degree of control by the city administrator over the commission's inspector general an untenable

situation due to the fact that the OIG will often be investigating policies and practices that the city administrator is responsible for. The OIG would therefore be put in a position of having to investigate and criticize their own boss. "It's really not viable," Kaplan said.

As a result, the council ultimately disagreed with Landreth and Parker, siding instead with what voters thought they were voting for: a truly independent police commission. They enacted an enabling ordinance in which the inspector general is hired by and supervised directly by the police commission — and only the police commission.

"This may be challenged, and it may delay the work of the commission going forward," said then-Councilmember Abel Guillen just before the final council vote, referring to the possibility that some entity (like the police union) could bring a lawsuit to block implementation of that part of the ordinance. "But I'm erring on the side of additional independence."

Two weeks later, during the second and final vote on this version of the ordinance, Landreth made an unusual public remark at the council meeting criticizing the council. "The legal advice provided to all of us by the city attorney and by outside counsel, and made public in at least one briefing and posted on the city's website, opines that the enabling ordinance, as written, and before you for final adoption tonight, contains provisions that violate the city charter as it relates to administrative functions," Landreth warned.

She then compared the city council's actions to those of the Trump administration, saying that "as we are all living through what is happening at our national level of government, we should tread very carefully and not willfully ignore the rule of law."

Grinage, referring to the resistance the commission has experienced from Landreth and Parker, said, "I think the administration is definitely resentful of this whole shift in power. But that was the whole point of Measure LL. It was to take this power away from them, given their ineptitude of holding the police accountable."

On paper, the new Oakland Police Commission is one of the most powerful police oversight bodies in the nation. Measure LL and the enabling ordinance give it the power to accept, reject, or modify almost any policy of the police department. It can write new policies entirely on its own, subject only to a veto by the city council. It can require police commanders and the chief and other city officials to testify on any matter before it and can use subpoenas to demand the production of records or witnesses. The commission's CPRA investigators can probe cases of police misconduct, with a priority on uses of force, shootings, racial profiling, and First Amendment assemblies, and a discipline subcommittee of the commission can punish officers who violate rules.

But the commission's first year, in practice, saw the police department and city attorney refuse several times to provide answers to basic questions and hand over key information.

In some instances, the commissioners themselves also appeared to be out of order by attempting to conduct impromptu — and unlawful — hearings on matters that hadn't been properly noticed on their agendas. In one case, Commissioner Edwin Prather attempted to question Assistant Police Chief Leronne Armstrong about federal Immigration

and Customs Enforcement activities in Oakland, including if OPD had received any recent subpoenas from ICE.

"Commissioner Prather, the discussion about ICE was not properly noticed on the agenda," said Allison Dibley, the deputy city attorney working for the commission at the time. "So, any further discussion would be in violation of the Brown Act."

Prather called Dibley's advice "a problem," and alleged that she was "shielding" police from scrutiny. But there hadn't, in fact, been any notice that the commission would discuss ICE activities in Oakland.

Prather, however, saw the city attorney's effort to shut down the discussion as an unnecessary censure of the commission's ability to discuss timely issues at its meetings. And it was part of a larger pattern in which OPD officials who appeared before the commission said very little of substance and refused to provide basic information about controversial topics with the city attorney backing them up.

For example, at the same meeting, Armstrong and Dibley also shut down a discussion about something that had been properly noticed on the agenda and was clearly within the commission's purview. During a question-and-answer period about a recently published report from OPD's federal court-appointed monitor that touched on numerous OPD policies and practices, Commissioner Harris asked Armstrong if he could provide a list of pending audits and reviews within OPD. In response, Armstrong paused, then looked nervously at the deputy city attorney and motioned toward her to speak on his behalf.

"If you are asking for information that's in the report that refers to ongoing tasks, that would be considered by the city to be confidential," Dibley said. Dibley was referring to the 52 tasks the NSA requires of OPD in order to come into compliance with constitutional policing standards. The NSA's 52 different tasks touch on virtually every aspect of the department, and the ongoing or open tasks that OPD has yet to comply with include several areas that Measure LL gives the police commission specific and far-reaching authority to review and even propose policy changes for. According to Measure LL, the commission has the power to shape any policy that "contains elements expressly listed in federal court orders or federal court settlements which pertain to the [d]epartment."

Larry White, a member of the Coalition for Police Accountability, told the commissioners right after the city attorney shut down the discussion, "Ms. Dibley has said that in the NSA, there are matters that are pending that are confidential, but that's what you need to be dealing with, the matters that are pending in the settlement agreement. If you can't talk about those, your work here ... you might as well go home."

That wasn't the last time police officials and the city attorney told the commissioners they couldn't share information with them because of the NSA. But the commission's difficulty in receiving NSA information from the police department is actually a minor problem compared to another issue that came up at the commission's Oct. 11 meeting.

CPR Director Anthony Finnell presented three investigations to the commission that he was recommending be closed. One of the cases was described as involving police "use of physical force" and another involved an officer "driving under the influence."

Finnell recommended closing both cases with no discipline meted out because the use of force was considered proper and the officer who was driving drunk quit OPD.

The third case was cryptically described with only one word, "truthfulness." But it was apparent that the case involved a complaint made against Chief Kirkpatrick by Brian Hofer, chair of Oakland's Privacy Advisory Commission, regarding false statements the chief made about an ICE raid in August of 2017 in which OPD assisted. Finnell exonerated Kirkpatrick.

Commissioner Dooley immediately questioned Finnell as to why it took one year to complete the investigation, leaving no statutory room for the commissioners to review the case to determine if they agreed in closing it.

And Commissioner Harris interjected with an even more pointed statement. "This information is useless," she bluntly told Finnell. "Useless. Useless."

The commissioners then demanded to know why Finnell had left out even a summary explanation of why his investigators came to the conclusions they did. Finnell's response caused several jaws to drop.

Finnell told the commissioners that according to Measure LL, the commissioners can never see detailed information about an investigation that the CPRA conducts — unless CPRA investigators come to a different conclusion about a case than those of OPD's internal affairs team and the police chief. In that situation, the case goes to the discipline subcommittee of the police commission for a hearing.

"What precludes us from having closed session and reviewing the reports?" asked commissioner Dooley in response.

"You only see personnel records when there's a disagreement between the chief and the agency," responded Meredith Brown, the commission's legal counsel who was appointed by City Attorney Parker.

After that meeting, Grinage of the Coalition for Police Accountability called the commission a "boondoggle."

"It never occurred to me that the police commissioners would have less power than their predecessors," she said, referring to the old CPRB, which was allowed to look at the case files prepared by their investigators in closed-session meetings.

"It wasn't my intention to give commissioners less authority, less ability to review documents than what the old CPRB had," Councilmember Kalb said in a recent interview.

Commissioner Benson said this surprise weakening of the commission's access to investigative files might have been an unintended consequence of the chaotic rush to draft and negotiate Measure LL and that no one ever raised the issue. "CPRB used to see all these files, so the assumption was that we wouldn't be giving up that same power."

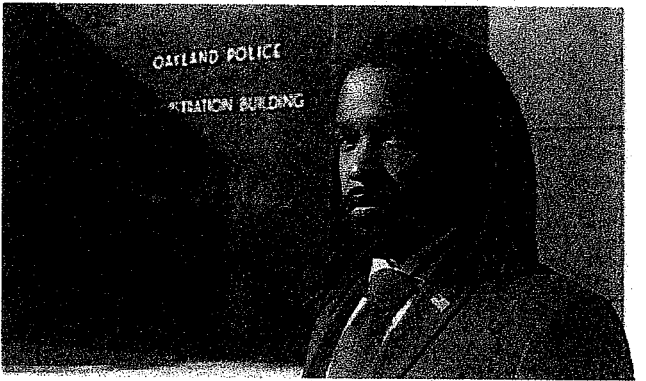
As of now, however, the commission has been stripped of this power.

It's unclear if Finnell's refusal to provide the commission with more details about cases played a role in his termination, but on Nov. 8, the commissioners voted in closed session to fire him. Reached by phone the next day, Finnell declined to comment.



But records indicate that there could have been other reasons Finnell was fired. As far back as February of last year, commission Chair Smith, Vice Chair Harris, and Commissioner Nisperos drafted a "letter of reprimand" to Finnell, according to commission records released under the Public Records Act.

Finnell's firing was just one of the departures of key personnel that's impacted the commission in its first year. Attorney Brown resigned in October, for reasons that are also unclear. Commissioner Nisperos, who was by far the most qualified and experienced on the commission — a lawyer who served as a deputy district attorney and manager of the old Oakland Citizen's Police Review Board, among many other roles — quit the commission in October, citing his decision to move to Vallejo.



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Photo by Lance Yamamoto

Henry Gage said the commission has struggled in part because of a lack of support from the city administration.

But it was alternate commissioner Dooley's resignation that laid bare the problems the commission has faced and will continue to grapple with. "There have been administrative delays, political objections, a failure to create needed relationships, and a lack of resources promised by Measure LL," Dooley wrote in her letter of resignation. She directed most fault at some of her fellow commissioners.

"Some [c]ommissioners lack an understanding of Measure LL and its core mission and have focused too much attention and energy on ancillary matters and personality conflicts," Dooley wrote. "The [c]ommission could easily have been successful without promised resources if all of the [c]ommissioners had understood what police accountability is and worked in partnership with city leadership to enact the measure."

Asked how she would describe the commission's performance so far, Commissioner Benson said, "We have squandered a year of governance. We have to get ourselves back on track."

She said the commission needs to revisit questions about how it operates internally with a focus on meetings that are less hierarchical and can attract more participation from the community.

Henry Gage, who is possibly the closest observer of the commission, agrees. He said the commission's biggest problem isn't the neglect and opposition other city officials have demonstrated, but rather internal organizational dysfunction.

"The commission just needs to do things," Gage said. "In an ideal world, you'd have a city administration that's creating the scaffolding to get them up and running. But they weren't exactly being set up for success."

Gage said that moving forward, it's imperative for the commission to focus its energy and rely on itself to organize its workload and exert its rightful authority. Doing so means completing trainings and setting up the structures that future commissioners will rely on to fulfill their mandate.

Dooley, who had been the harshest internal critic of the commission, still strikes an optimistic tone. But she said the conflicts between the city administrator, city attorney, and commission need to be addressed if this year is to see any progress.

"I really think they can do this," she said. "The mayor, administrator, and commissioners should all sit down and say, 'How can we make this work?' They need to hammer out who is responsible for what and what needs to be fixed."

Still, Dooley sees conflicts that may need to ultimately be addressed through changes to the city charter to remove all ambiguity in terms of who controls the commission's staff.

Kalb agrees on that point. He said a ballot measure in 2020 to clean up Measure LL and determine once and for all who hires and supervises staff, and what information the commissioners can access, is probably needed.

It may have been difficult this year for the commission to focus because of the multitude of distractions they've faced, Kalb said. Crises like ICE raids, officer-involved shootings, and an endless chorus of criticism at their meetings have made it hard for them to envision the bigger picture of what they're supposed to build.

But this crop of police commissioners aren't just police commissioners, they're the first police commissioners. They bear a burden of having to create the structures under which all future commissioners will work. □

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