



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**Wednesday, September 18, 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 September 4, 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, 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. Lexipol Policies Subcommittee.
- b. Probation & Parole Questioning Subcommittee – Next meeting Oct. 8, 11:00 a.m.

- c. MOU Compendium Subcommittee
- d. Standard of Proof Subcommittee
- e. Use of Force Subcommittee

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

- a. Review and approve the following Surveillance Use Policies and related reports and policies under Surveillance Technology Use & Community Safety Ordinance.
  - i. 1301 – Global Positioning System (GPS) Tracking Devices (Use Policy) and Appendix A (Acquisition Report), as revised following July 24, 2019 meeting. *(To be delivered.)*
- b. Lexipol Policies for review and approval.  
From: Lexipol Subcommittee

Lexipol #	G.O. (if any)	Title
301	R-03	Use of Force Review Board
329	A-49	Major Incident Notification
341	V-08	Volunteer Program
342		Service Animals
343		Gun Violence Restraining Orders
344		Off-Duty Law Enforcement Actions
347	F-05	Firearms and Tactics Unit
351	T&B 249	Second Response
407	X-01	Hostage and Barricade Incidents
412		Foreign Diplomatic and Consular Representatives

*(See separate packet.)*

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

- a. Draft 2018 PRC Annual Report for review and approval.  
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](mailto:prc@cityofberkeley.info).



**PRC REGULAR MEETING ATTACHMENTS  
SEPTEMBER 18, 2019**

**MINUTES**

September 4, 2019 Regular Meeting Draft Minutes Page 7

**AGENDA-RELATED**

Item 8 – Subcommittee List updated 9-5-19. Page 13

Item 10.a. – Draft 2018 PRC Annual Report. Page 15

**COMMUNICATIONS**

9-11-19 Memo to the Mayor and Councilmembers from the PRC  
Chairperson: Proposed Berkeley Police Department Policy 422,  
Automated License Plate Readers. Page 53

9-10-19 Email from Chris Gilbert re Solano Stroll and Police assault  
rifles. Page 61





Police Review Commission (PRC)

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

**Wednesday, September 4, 2019  
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 Gwen Allamby (Vice Chair)  
Commissioner Kitty Calavita  
Commissioner Michael Chang  
Commissioner LaMonte Earnest  
Commissioner Juliet Leftwich  
Commissioner Elisa Mikiten  
Commissioner Nathan Mizell  
Commissioner Ismail Ramsey

**Absent:** None.

**PRC Staff:** Katherine J. Lee, PRC Officer

**BPD Staff:** Capt. Rico Rolleri, Lt. Dave Lindenau, Sgt. Rashawn Cummings, Ofc. Daniel Morales (BPA)

**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 July 24, 2019**

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

**Ayes:** Allamby, Calavita, Chang, Earnest, Mikiten, Perezvelez, and Ramsey.

**Noes:** None      **Abstain:** Leftwich, Mizell      **Absent:** None

**5. CHAIR'S REPORT**

-- Attended National Night Out.

**6. PRC OFFICER'S REPORT**

-- New Commissioners Leftwich (appointed by Councilmember Wengraf) and Mizell (appointed by Councilmember Robinson) were introduced and said a few words about themselves.

-- One new complaint filed since last meeting; complainant chose to mediate.

-- PRC's 2019 – 2020 Work Plan is in the City Council's Sept. 10, 2019 agenda packet as an information item, and also in today's PRC agenda packet.

-- PRC Officer has renewed PRC's request to the Chief for comment on draft report of the June 20, 2017 Subcommittee [Review of BPD Response at City Council meeting] now that related litigation has concluded.

**7. CHIEF OF POLICE'S REPORT**

Capt. Roller reported on behalf of Chief Greenwood:

-- Staffing has been trending up slowly. Currently 169 out of an authorized 181 sworn officers. 8 officers in 3 academies. 6 in field training; 2 to graduate soon. 2 new laterals to be sworn in Sept. 16, and a recruit graduating that day.

-- With increased staffing, will be able to staff shorthanded units, like traffic collisions, and bike officers.

-- Dispatch is down 4 positions.

Capt. Roller 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. Lexipol Policies Subcommittee – Chair Perezvelez provided updates from the Aug. 7 and Sept. 4 meetings. He appointed Comm. Mikiten to this subcommittee.

b. Probation & Parole Questioning Subcommittee – Chair Calavita provided updates from the Aug. 14 and Sept. 3 meetings. Next meeting October 8.

c. MOU Compendium Subcommittee – waiting on Chief's answers.

d. Standard of Proof Subcommittee – awaiting outcome of meet-and-confer.

e. Use of Force Subcommittee – PRC Chair Perezvelez appointed Comms. Leftwich, Chang, and himself to this subcommittee.



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

- a. Review and approve the following Surveillance Use Policies and related reports and policies under Surveillance Technology Use & Community Safety Ordinance.
  - i. 1301 – Global Positioning System (GPS) Tracking Devices (Use Policy) and Appendix A (Acquisition Report), as revised following July 24, 2019 meeting. *(Item postponed to the next meeting.)*
  - ii. 1302 – Automated License Plate Readers (ALPRs) (Use Policy), Appendix A (Acquisition Report), and 422, ALPR Policy.

**Motion to approve for submission to the City Council for its review and discussion Lexipol Policy 422 with a letter expressing the following two caveats: 1) There was concern among some commissioners that the ALPR was acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the City Council had in mind, then this policy should be modified accordingly; and 2) Section 422.4(c) does not adequately define what constitutes a crime scene.**

Moved/Seconded (Perezvelez/Mikiten)

**Friendly amendment: and to remind the Council that they will see actual use of this technology under the reporting policy in place in the Surveillance Ordinance.**

Moved by Mikiten; Accepted by Perezvelez

**Motion, as amended, carried:**

Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, and Ramsey.

Noes: Earnest, Mizell                      Abstain: Allamby                      Absent: None

- b. Policy Complaint #2455: Decide whether to accept policy complaint based on additional information received and, if accepted, determine how to proceed.

**Motion to not accept Policy Complaint #2455.**

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

Ayes: Allamby, Calavita, Chang, Earnest, Leftwich, Mikiten, Mizell, Perezvelez, and Ramsey.

Noes: None                      Abstain: None                      Absent: None

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

- a. Approve issuing a certificate of appreciation for former Commissioner Terry Roberts; and discuss criteria for such certificates.

From: PRC Officer

**By general consent, the Commission agreed to present former Commissioner Terry Roberts with a Certificate of Appreciation, and empowered the Chair and the PRC Officer to prepare it.**

**Motion to establish the following criteria for Issuing certificates of appreciation to former commissioners: 1) It shall be agendized for a full vote before the Commission; 2) It should be presented while the commissioner is still on the Commission, is possible; and 3) It shall be given to a commissioner who has served on the PRC at least 3 years.**

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

**Ayes: Allamby, Calavita, Chang, Earnest, Leftwich, Mikiten, Perezvelez, and Ramsey.**

**Noes: None**

**Abstain: Mizell**

**Absent: None**

**b. Lexipol Policies for review and approval.**

**From: Lexipol Subcommittee**

<b>Lexipol #</b>	<b>G.O. (if any)</b>	<b>Title</b>
301	R-03	Use of Force Review Board
329	A-49	Major Incident Notification
341	V-08	Volunteer Program
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347	F-05	Firearms and Tactics Unit
351	T&IB 249	Second Response
407	X-01	Hostage and Barricade Incidents
412		Foreign Diplomatic and Consular Representatives

*(Item postponed to the next meeting.)*

**11. ATTACHMENTS & COMMUNICATIONS**

Attached.

**12. PUBLIC COMMENT**

There was 1 speaker.

**Closed Session**

**13. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN COMPLAINT #2456**

**Motion to administratively close Complaint #2456.**

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

**Ayes: Allamby, Calavita, Chang, Earnest, Leftwich, Mikiten, Perezvelez, and Ramsey.**

**Noes: None**

**Abstain: Mizell**

**Absent: None**

**14. REVIEW OF ADMINISTRATIVE LAW JUDGE'S DECISION IN CALOCA APPEAL OF COMPLAINT #2446**

(Discussed; no action taken.)

*End of Closed Session*

**15. ANNOUNCEMENT OF CLOSED SESSION ACTION**

The Commission's vote to not accept Complaint #2456 was announced.

**16. ADJOURNMENT**

**Motion to adjourn the meeting.**

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

Ayes: Allamby, Calavita, Chang, Earnest, Leftwich, Mikiten, Mizell, Perezvelez, and Ramsey.

Noes: None

Abstain: None

Absent: None

**The meeting was adjourned at 10:05 p.m.**



**POLICE REVIEW COMMISSION  
SUBCOMMITTEES LIST  
Updated 9-5-19**

<b>Subcommittee</b>	<b>Commissioners</b>	<b>Chair</b>	<b>BPD Reps</b>
<b>Lexipol Policies</b> Formed 5-23-18 Renewed 5-22-19	Mikiten Perezvelez Ramsey	Perezvelez	Sgt. Samantha Speelman Capt. Rico Rolleri
<b>MOU Compendium</b> Formed 2-13-19	Allamby Mikiten Perezvelez	Perezvelez	
<b>Standard of Proof</b> Formed 4-10-19	Calavita Mikiten Ramsey		
<b>Probation &amp; Parole Searches</b> Formed 5-8-19	Allamby Calavita	Calavita	Lt. Daniel Montgomery Sgt. Spencer Fomby
<b>Use of Force Policy</b> Formed 7-10-19	Chang Leftwich Perezvelez		



DRAFT

# CITY OF BERKELEY



## POLICE REVIEW COMMISSION

2018 ANNUAL REPORT





# CITY OF BERKELEY

## POLICE REVIEW COMMISSION

### **Commissioners - 2018**

Sahana Matthews, Chair  
George Perezvelez, Vice-Chair  
Gwen Allamby  
Kitty Calavita  
Andrea Prichett  
Ismail Ramsey  
Terry Roberts  
Michael Sherman  
Ari Yampolsky

Clarence Ford (through 2-26-18)  
George Lippman (through 4-24-18)

### **Mayor**

Jesse Arreguin

### **Councilmembers**

Linda Maio (District 1)  
Cheryl Davila (District 2)  
Benjamin Bartlett (District 3)  
Kate Harrison (District 4)  
Sophie Hahn (District 5)  
Susan Wengraf (District 6)  
Kris Worthington (District 7)  
Lori Droste (District 8)

### **City Manager**

Dee Williams-Ridley

### **Deputy City Manager**

Jovan Grogan (through 7-15-18)  
Paul Buddenhagen (interim, from 7-16-18)

POLICE REVIEW COMMISSION OFFICE  
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*LETTER FROM 2018 CHAIR TO BE INSERTED HERE*

*Portion of 2017 letter appears below FYI*

To the City and Community of Berkeley:

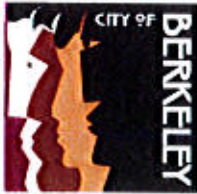
The Berkeley Police Review Commission presents the Commission's 2017 Annual Report. This report includes statistical data concerning misconduct complaints filed during the year, an outline of the complaint process, as well as Commission work and achievements.

[ETC.]

Respectfully,

Sahana Matthews  
Police Review Commission  
Chair 2018





Police Review Commission (PRC)

, 2019

Dee Williams-Ridley  
City Manager  
2180 Milvia Street  
Berkeley, CA 94704

Dear Ms. Williams-Ridley,

I am pleased to present to you the 2018 Annual Report for the Police Review Commission. The purpose of this report, provided in accordance with the PRC's enabling ordinance (Ord. No. 4644-N.S.), is to furnish statistical data regarding the number of complaints received, their general characteristics, and manner of conclusion.

For cases that have proceeded to Board of Inquiry Hearings, the data also includes the number of hearings, the various categories of allegations heard, and whether the allegations against an officer were sustained, not sustained, unfounded, or exonerated. This report also contains data on the ethnicity, gender and ages of complainants, as well as comparisons to statistics from the previous four years.

Finally, this report describes the other work the Police Review Commission undertook in 2018. Notably, the PRC devoted a significant amount of time to drafting a proposed amendment to the City Charter that would restructure the civilian oversight agency to vest it with greater authority in policy-making and certain disciplinary decisions.

Among the Berkeley Police Department policies, practices, and procedures reviewed this year, the PRC followed up on its 2017 analysis of pedestrian and vehicle stop data by pressing for implementation of steps to address disparate race-based treatment of civilians; began reviewing a revised body-worn camera policy issued just ahead of the department's use of the cameras, and started on the task of reviewing the department's operational and administrative policies as they are transitioned from General Orders into the Lexipol system.

Respectfully submitted,

Katherine J. Lee  
Police Review Commission Officer



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# I. EXECUTIVE SUMMARY 2018

## Meetings

In 2018, the Commission held 53 regular, special, and subcommittee meetings, and Board of Inquiry hearings. By comparison, 65 such proceedings were held in 2017.

## Complaints

The Commission received 13 individual complaints and no policy complaints in 2018. In 2017, the Commission received 22 individual complaints and 3 policy complaints.

## Complainants

The demographic distribution of individual complainants in 2018 was 7 males and 6 females; 4 Blacks, 7 Caucasians, 1 Asian, and 1 multi-ethnic person. Complainants ranged from 25 to 79 years of age; with almost half in their fifties and sixties.

## Board of Inquiry (BOI) Hearings

The Commission completed 5 BOI hearings – proceedings in which a panel of commissioners considers allegations against police officers – in 8 cases. Allegations of excessive force and discrimination were the most common of the 31 allegations considered. No findings of police misconduct were sustained.

## Caloca Appeals

Subject officers may seek review of a BOI “sustained” finding through a Caloca appeal. In 2018, one sustained finding was appealed, and upheld following a hearing.

## Policy Review Highlights

The PRC tackled the significant task of drafting a charter amendment to

broaden and strengthen the PRC’s powers. The City Council modified the PRC’s proposal, which was still being negotiated with the police union at the end of 2018.

The PRC’s efforts to reduce apparent race-based disparities in the police department’s pedestrian and traffic stops continued in 2018 with the Council’s acknowledgement of the PRC’s report analyzing the stop data, and a presentation from the Center for Policing Equity of its examination of the data.

In March, the City Council approved a Surveillance Technology Use and Community Safety Ordinance, based on a PRC proposal. The ordinance aims to ensure that the benefits of the City’s use of a surveillance technology outweighs the impacts on the public’s privacy rights and civil liberties.

Berkeley police officers began using body-worn cameras in October. The PRC had worked extensively with the BPD to develop a policy for their use.

### Berkeley Police Department

At the end of 2018, BPD had **159** sworn police officers and received **81,713** calls for service. (This figure includes phone calls to BPD requesting service, calls resulting from an officer personally observing a situation requiring service, and direct contacts to BPD by a person requesting help).



## II. INTRODUCTION

Berkeley's Police Review Commission (PRC) was established by voter initiative in 1973. As one of the oldest civilian oversight agencies in the nation and the first one authorized to conduct investigations, the PRC has been an important model and source of information for oversight bodies across the United States.

## III. MISSION STATEMENT

The mission of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

## IV. STAFF

The PRC Office is a division of the City Manager's Office with a staff of three:

- **The PRC Officer** administers the daily operations of the PRC office, supervises staff, oversees complaint investigations, and serves as Secretary to the Commission. As Secretary, the PRC Officer staffs commission meetings and provides managerial support in the execution of PRC policies and procedures.
- **The PRC Investigator** conducts in-depth investigations of civilian complaints against members of the Berkeley Police Department, assists with special projects, and periodically serves as Acting Commission Secretary.
- **The Office Specialist III** manages the front office, provides administrative support to the PRC Officer and Investigator, prepares and maintains PRC records, and compiles statistics.



**Maritza Martinez**, Office Specialist III (joined staff in March 2001);  
**Byron Norris**, PRC Investigator (joined staff in October 2009);  
**Katherine Lee**, PRC Officer (joined staff in January 2014).



## V. COMMISSIONERS

Nine Berkeley residents are appointed by the Mayor and members of the City Council to serve on the PRC. These Commissioners represent diverse backgrounds and viewpoints and therefore provide invaluable community perspectives. The Commission generally meets twice a month. Individual commissioners also attend subcommittee meetings and Board of Inquiry Hearings throughout the year. The Commissioners devote considerable volunteer time and effort toward fulfilling their duties.



Commissioners as of the end of 2018:

*Top Row* -- Chair Sahana Matthews, Vice-Chair George Perezvelez, Gwen Allamby, Kitty Calavita, Andrea Prichett.

*Middle Row* – Ismail Ramsey, Terry Roberts, Michael Sherman, Ari Yampolsky.

Other Commissioners who served in 2018:

*Bottom Row* – Clarence Ford, George Lippman.



## VI. COMPLAINTS

### 1. INDIVIDUAL COMPLAINTS - Investigation

A complaint consists of one or more claims of alleged misconduct against one or more individual BPD officers. Timely-filed<sup>1</sup> complaints are investigated and prepared for hearing or, if the complainant and subject officer agree, referred for mediation. In some instances, cases are referred to the Commission for administrative closure. Cases may be submitted for closure for reasons that include: the complaint does not allege misconduct on its face or is frivolous; the investigative deadlines are not met; the complainant fails to cooperate; the complainant requests closure.

In cases where an investigation is completed, the PRC investigator interviews the complainant, subject officer, and witnesses; collects other evidence; and prepares a written report. A Board of Inquiry Hearing (BOI) is then scheduled, which consists of three Commissioners impaneled to hear testimony and render findings. The findings from the BOI are forwarded to the City Manager and the Chief of Police.

When a complaint is filed with the PRC, a copy is forwarded to the Berkeley Police Department's Internal Affairs Bureau, which conducts its own, separate investigation. Under the Memorandum of Understanding between the City and the Berkeley Police Association, any discipline that involves a loss or reduction of pay or discharge must occur within 120 days of the incident giving rise to the disciplinary action or the date the City had knowledge of the incident. While the PRC does not impose or recommend discipline, the City Manager and Chief of Police may consider the PRC's BOI findings when considering discipline, if the findings are issued in time to meet the 120-day deadline.

Separate from the disciplinary process, subject officers can appeal PRC sustained allegations, which are heard by the state Office of Administrative Hearings. (See page 18.)

The standard of proof – the amount of evidence required at a BOI to sustain an allegation – is “clear and convincing evidence.” This standard is higher than a preponderance of the evidence but lower than beyond a reasonable doubt. The four categories of findings are:

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<sup>1</sup> Complaints must be filed within 90 calendar days of the alleged misconduct, unless a complainant is incapacitated or otherwise prevented from filing a complaint. A complaint filed between 91 and 180 calendar days of the alleged misconduct can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to timely file.





1. **Sustained:** the alleged act did occur, and was not justified;
2. **Not Sustained:** the evidence fails to support the allegation, however it has not been proven false;
3. **Unfounded:** the alleged act did not occur; and
4. **Exonerated:** the alleged act did occur but was lawful, justified and proper.

Complainant Advocates. In the fall of 2017, students at UC Berkeley Law School launched the Boalt (now Berkeley) Police Review Project to assist people who file individual complaints with the PRC and who seek representation. These services are provided free of charge. Law students have since helped several complainants prepare for their cases. Because subject officers are usually represented at hearings, the Commission believes that complainants feel less intimidated and better prepared having an advocate assist them before and during the hearing.

#### **MEDIATION – an alternative to investigation**

After an individual files a complaint, he or she may opt for mediation. This will go forward only if the officer who is the subject of the complaint agrees. Mediations are conducted by an independent, professional mediator. A mediation gives both the complainant and the subject officer the opportunity to speak and respond to each other in a respectful environment. At the conclusion of mediation, the complaint is forwarded to the Commission for closure. Once mediation is completed and the complaint closed, the complainant cannot opt for an investigation.

## **2. POLICY COMPLAINTS**

A policy complaint is a request from a member of the public to the Commission to review a particular BPD policy, practice, or procedure, because the complainant believes that the policy could be improved or should be revised. Complaints or concerns about BPD policies are presented by staff to the full commission at a regular meeting. The Commission may conduct its own review; form a subcommittee to review the policy, or ask staff to conduct an investigation or take other action, and present a report at a future meeting. After conducting its own review, or receiving a report from a subcommittee or staff, the PRC may close the complaint without further action or recommend changes in policy, practice or procedures to the BPD and the City Manager.

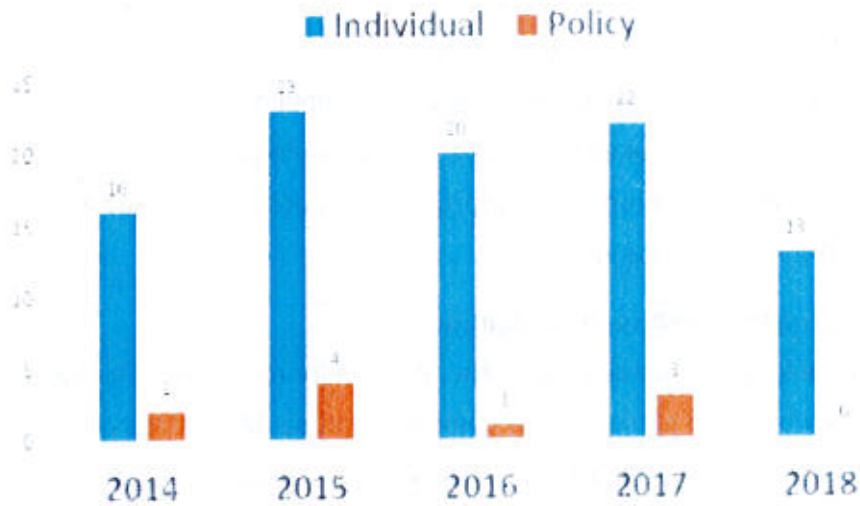


## VII. STATISTICS 2014 - 2018

### 1. COMPLAINTS RECEIVED

In 2018, the PRC received 13 individual complaints and no policy complaints.

The average number of complaints filed over the past five years is 20.8.

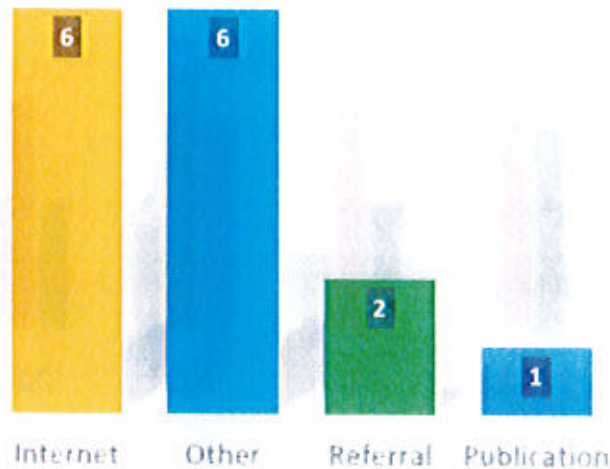


COMPLAINTS RECEIVED	2014	2015	2016	2017	2018
Individual	16	23	20	22	13
Policy	2	4	1	3	0
<b>Total</b>	<b>18</b>	<b>27</b>	<b>21</b>	<b>25</b>	<b>13</b>



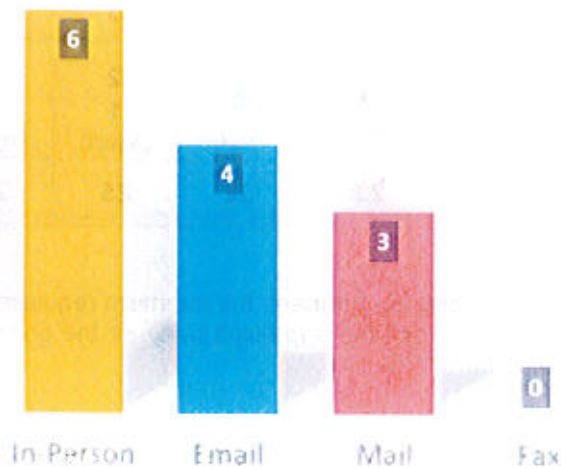
### How Complainants in 2018 Heard About the PRC

On the complaint forms, complainants are asked to check a box stating how they learned about the Police Review Commission. (One of the 13 complainants checked 3 boxes.)



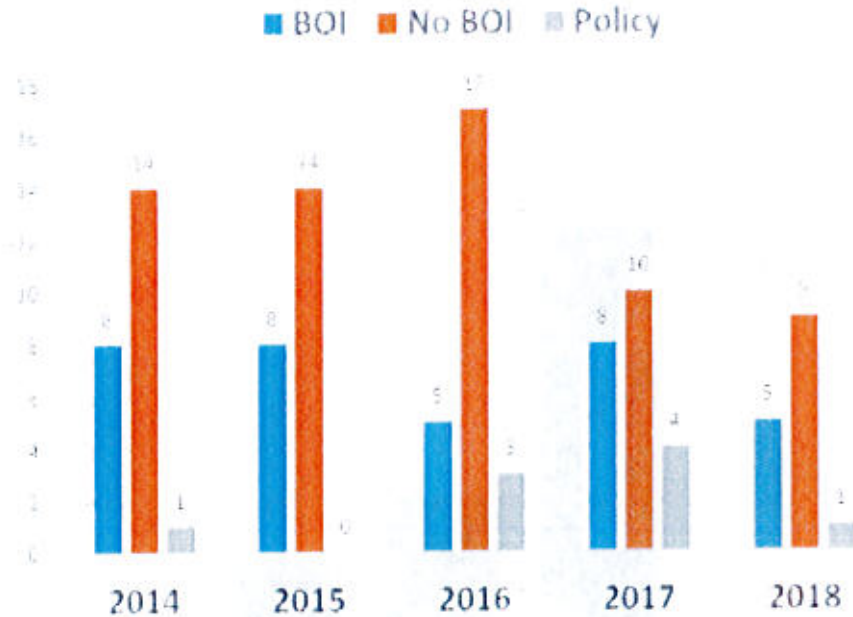
### How Complainants Were Filed with the PRC in 2018

Persons may file individual and policy complaints by e-mail, U.S. mail, fax, or in person at our offices.





**2. COMPLAINTS CLOSED**



COMPLAINTS CLOSED	2014	2015	2016	2017	2018
<b>BOI Hearings Completed</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>8</b>	<b>5</b>
<b>Closed without BOI</b>	<b>14</b>	<b>14</b>	<b>17</b>	<b>10</b>	<b>9</b>
Admin. Closure (includes withdrawn)	11	6	5	5	6
Mediation	0	1	5	1	0
Dismissal	1	4	2	0	1
Reject**	2	3	5	4	2
<b>Policy</b>	<b>1</b> (reject)	<b>0</b>	<b>2</b> <b>1</b> (reject)	<b>2</b> <b>2</b> (reject)	<b>1</b> (reject)
<b>Total Cases Closed</b>	<b>23</b>	<b>22</b>	<b>25</b>	<b>22</b>	<b>15</b>

\*\* Staff may reject individual complaints if they do not meet the minimum requirements of a valid complaint, for instance, the person filing was not the aggrieved party, or the complaint was filed more than 180 days after the incident date.





### 3. ALLEGATIONS HEARD AT BOARDS OF INQUIRY

#### Allegation categories:

**EXF**=Excessive Force

**DIS**=Discourtesy

**ASD**=Improper Arrest, Search, Seizure, or Stop/Detention

**DET**=Improper Detention Procedures

**PRJ**=Discrimination

**PRO**=Improper Police Procedures

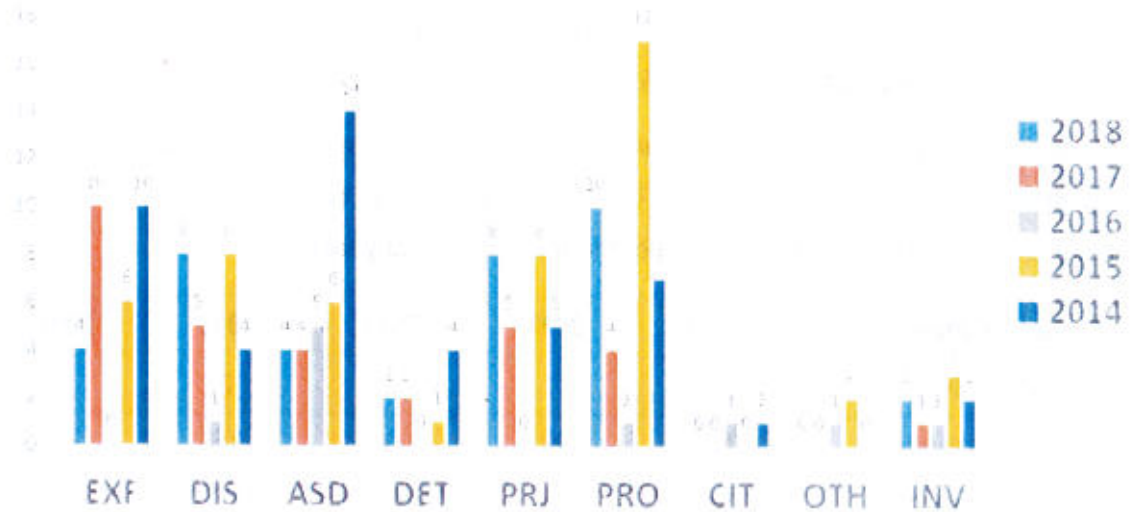
**CIT**=Improper Citation or Tow

**OTH**=Other (see p. 13 for examples)

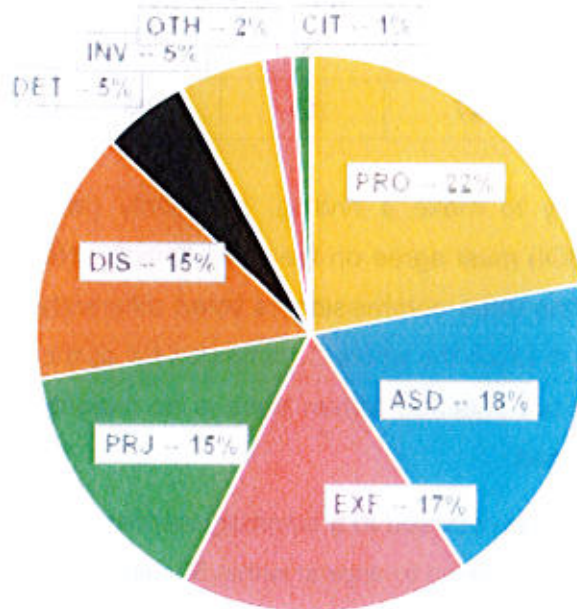
**INV**=Improper Investigation

**HAR**=Harassment (no allegations heard 2014 – 2018)

#### BY CATEGORY AND YEAR



#### BY PERCENTAGE, for the years 2014-2018 combined





#### 4. FINDINGS ON ALLEGATIONS HEARD AT BOARDS OF INQUIRY

In 2018, a Board of Inquiry hearing was convened in five cases to make findings on allegations. Summary dismissal occurs when the BOI determines an allegation is wholly without merit.

Thirty-eight allegations were decided in those five cases. Whether separate types of allegations are lodged against one officer in the same case, or one type of allegation is made against multiple officers, each allegation against each officer is counted individually. For example: if an allegation of discourtesy is made against three officers, the statistics will reflect three separate allegations for that case.

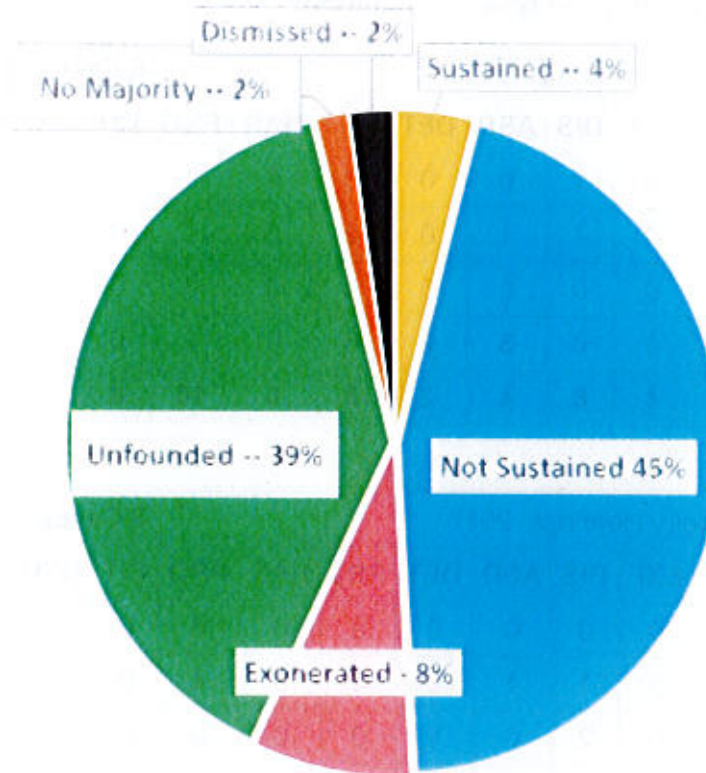
Of the 38 allegations considered, 2 were sustained, 23 were not sustained, none were exonerated, and 13 were unfounded. The table below shows how the decisions made on allegations in 2018 compare to those of the four preceding years.

Finding Categories	2014	2015	2016	2017	2018
Sustained	2	1	2	0	2
Not Sustained	15	24	3	15	23
Exonerated	8	2	1	3	0
Unfounded	21	22	2	11	13
Summary Dismissal	0	0	2	2	0
No Majority Vote	1	2	0	0	0
<b>Total</b>	<b>47</b>	<b>51</b>	<b>10</b>	<b>31</b>	<b>38</b>

For the Board of Inquiry to make a finding, a majority (at least two of the three commissioners on the BOI) must agree on the same finding. "No Majority Vote" in 2015 occurred when each of the three commissioners voted differently. In 2014, "No Majority Vote" occurred in a case in which the whole Commission sat as the BOI, and the five votes needed to sustain were not obtained. When there is no majority finding in a case, the matter is essentially dropped.

A dismissal of a complaint, as opposed to a summary dismissal of an allegation, occurred in 2018 when the complainant failed to appear within 30 minutes of the scheduled hearing time. The PRC Regulations require dismissal in such situations. The allegations in that complaint are not included in the above statistics.

**BOARD OF INQUIRY FINDINGS**  
(Percentage by category, for the years 2014 – 2018 combined)



**RATES OF "SUSTAINED" FINDINGS 2014 – 2018**

The percentage of allegations sustained of the total number of allegations heard at a Board of Inquiry Hearing for 2014-2018 are shown on this table. \* No allegations were sustained in 2017.

2018	2 of 38 allegations sustained	5%
2017	0 of 31 allegations sustained	0%
2016	2 of 10 allegations sustained	20%
2015	1 of 51 allegations sustained	2%
2014	2 of 47 allegations sustained	4.25%

\* Percentages in the last column are rounded to the nearest ¼ of 1 percent.

**DECISIONS ISSUED WITHIN 120 DAYS OF THE COMPLAINT**

Of the five cases in which a BOI hearing was held in 2018, findings were issued within 120 days of the complaint date in three of them.





## 5. FINDINGS ON ALLEGATIONS HEARD AT BOIs (Detailed by finding and type of allegation)

Board of Inquiry Hearings 2018											6 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	Totals
Sustained	0	1	0	0	0	0	1	0	0	0	2
Not Sustained	4	7	1	0	2	0	7	0	0	2	23
Exonerated	0	0	0	0	0	0	0	0	0	0	0
Unfounded	0	0	3	2	6	0	2	0	0	0	13
<b>Totals</b>	<b>4</b>	<b>8</b>	<b>4</b>	<b>2</b>	<b>8</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>38</b>

Board of Inquiry Hearings 2017											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	0	0	0	0	0	0	0	0	0	0
Not Sustained	5	1	1	0	3	0	4	0	0	1	15
Exonerated	0	2	0	1	0	0	0	0	0	0	3
Unfounded	3	2	3	1	2	0	0	0	0	0	11
Summarily Dism.	2	0	0	0	0	0	0	0	0	0	2
<b>Totals</b>	<b>10</b>	<b>5</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>31</b>

Board of Inquiry Hearings 2016											5 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	0	1	0	0	0	0	0	0	1	2
Not Sustained	0	0	2	0	0	0	0	0	1	0	3
Exonerated	0	0	0	0	0	0	1	0	0	0	1
Unfounded	0	1	0	0	0	0	0	1	0	0	2
Summarily Dism.	0	0	2	0	0	0	0	0	0	0	2
<b>Totals</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>10</b>

(See next page for explanation of allegation categories.)



Board of Inquiry Hearings 2015											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	0	0	0	0	1
Not Sustained	1	6	0	0	2	0	13	0	0	2	24
Exonerated	0	0	1	0	0	0	1	0	0	0	2
Unfounded	5	1	5	0	6	0	3	0	1	1	22
No Majority Vote	0	0	0	1	0	0	0	0	1	0	2
<b>Totals</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>0</b>	<b>17</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>51</b>

Board of Inquiry Hearings 2014											8 Cases
Categories	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Sustained	0	1	0	0	0	0	1	0	0	0	2
Not Sustained	7	0	4	0	0	0	2	1	0	1	15
Exonerated	0	0	5	2	0	0	1	0	0	0	8
Unfounded	3	3	5	2	5	0	2	0	0	1	21
No Majority Vote	0	0	0	0	0	0	1	0	0	0	1
<b>Totals</b>	<b>10</b>	<b>4</b>	<b>14</b>	<b>4</b>	<b>5</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>47</b>

**Allegation Categories**

EXF=Excessive Force

DIS=Discourtesy

ASD=Improper Arrest, Search, Seizure, or Stop/Detention

DET=Improper Detention Procedures

PRJ=Discrimination

HAR=Harassment

PRO=Improper Police Procedures

CIT=Improper Citation or Tow

OTH=Other (includes Abuse of Discretion, Breach of Confidentiality, Failure to Identify Oneself, Lack of Discretion, Threat, Abuse of Authority, and Retaliation)

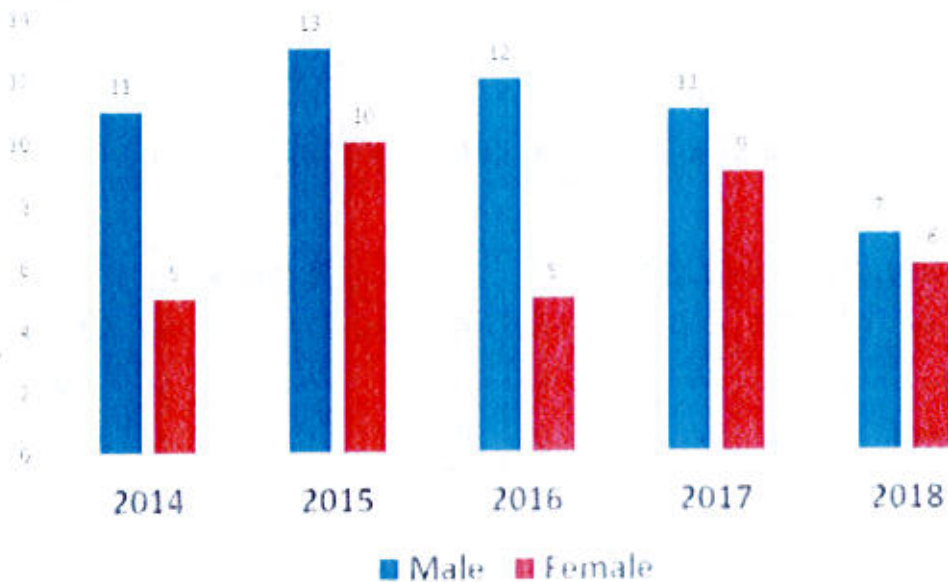
INV=Improper Investigation



## 6. COMPLAINANT DEMOGRAPHICS

Complainants are asked to report their ethnicity, gender, and age, so that the PRC can track this information for statistical purposes. For 2018, the gender, ethnicity, and age statistics are reported for the 13 people who filed individual complaints.

### COMPLAINANTS' GENDER

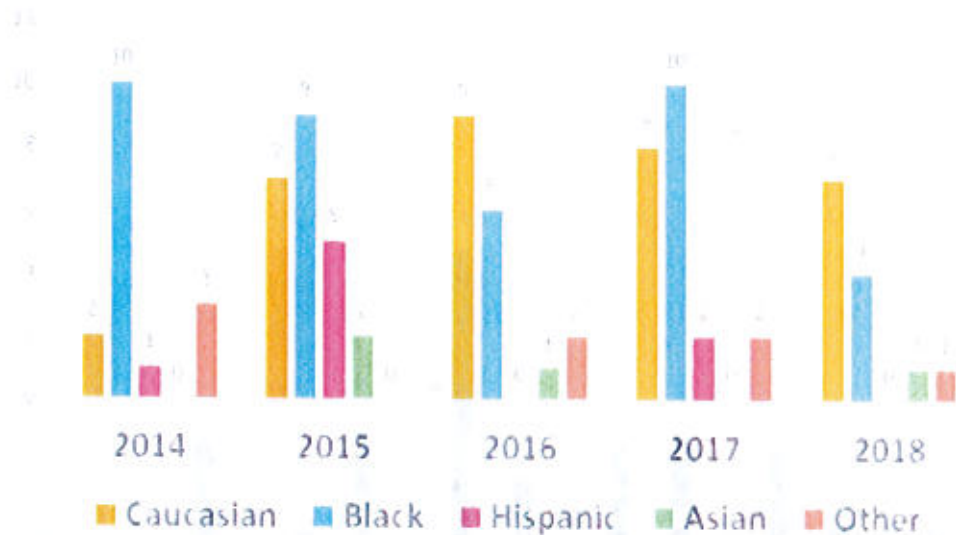


In 2018, males comprised just over half of the 13 complainants who reported their gender. Male complainants have consistently outnumbered female complainants over the past five years, although to varying degrees.



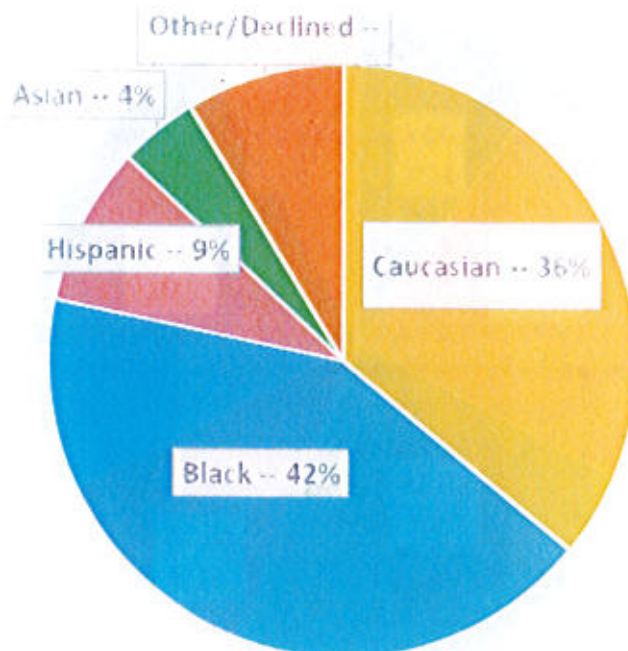


### COMPLAINANTS' ETHNICITY



In 2018, the majority (11) of the 13 individual complainants who reported their ethnicity were Caucasian or Black, consistent with most prior years. There was 1 Asian complainant. The one complainant in the "Other" category in 2018 was multi-ethnic.

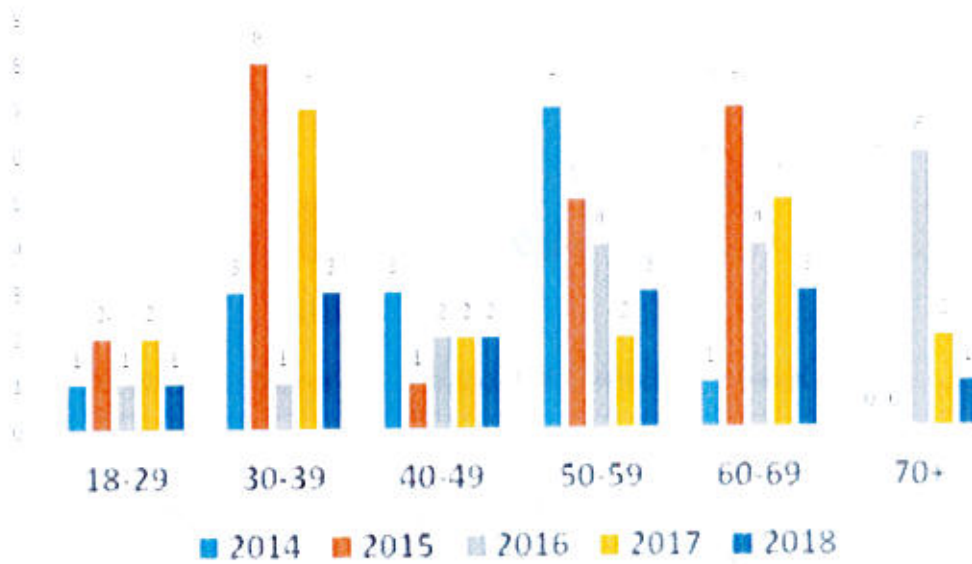
Percentage of complainants by reported ethnicity, for the years 2014 to 2018 combined.



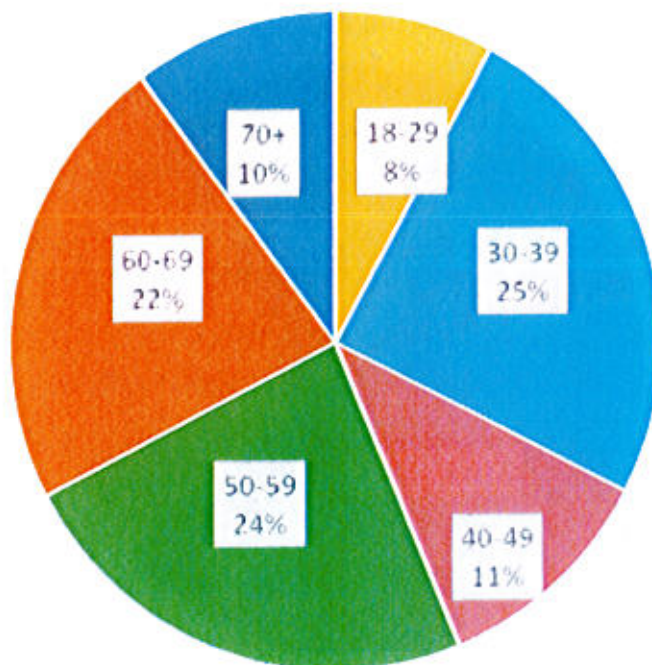


### COMPLAINANTS BY AGE GROUP

Of the 13 complainants who reported their age in 2018, almost half (six) were in their fifties or sixties.



Percentage of complainants by reported age, for the years 2014 to 2018 combined.

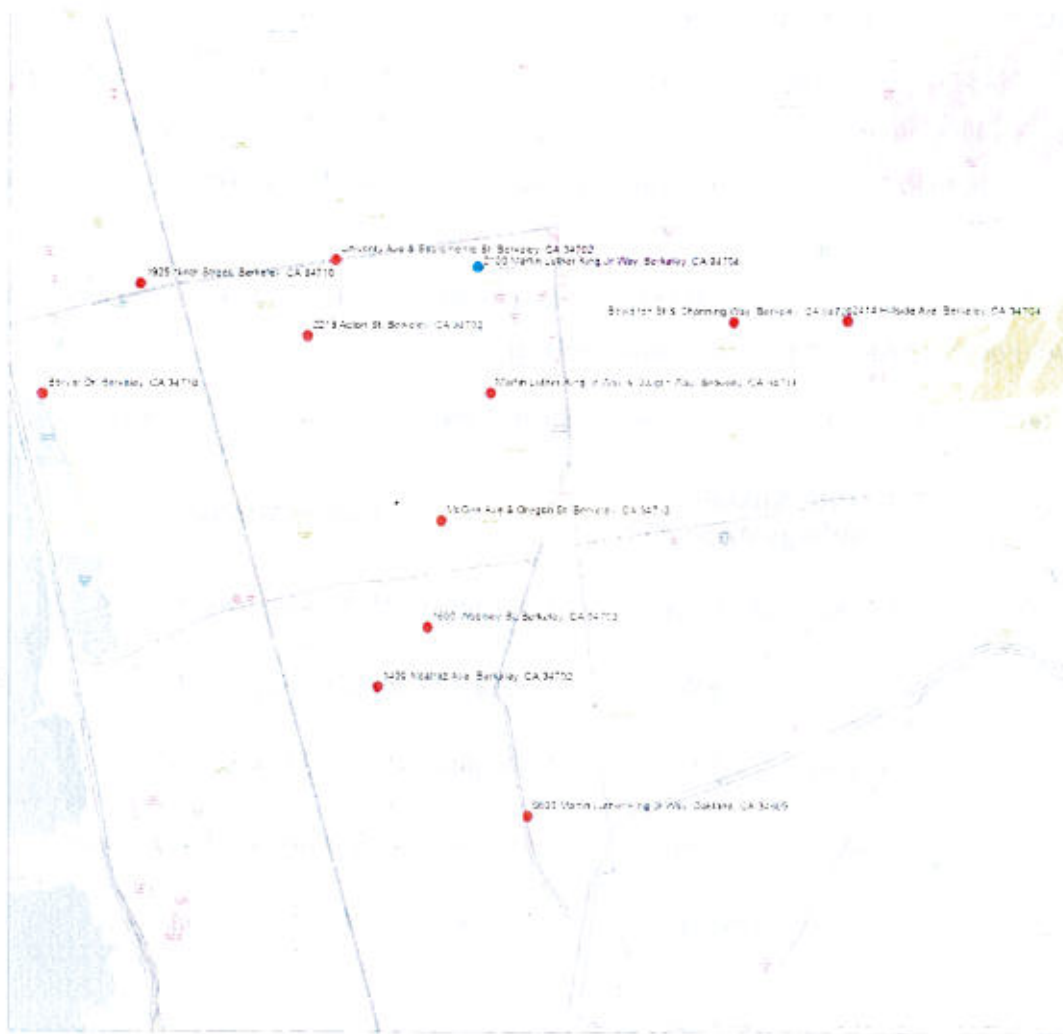






## 7. INCIDENT LOCATION MAP FOR 2018

*[Getting a better map from IT]*



This map shows where misconduct is alleged to have occurred for the complaints filed in 2018. Two instances of alleged misconduct show as occurring at 2100 Martin Luther King, Jr. Way, which houses the Berkeley Police Department. That address is used for allegations that the officers' investigations were inadequate.



## 8. APPEALS OF BOARD OF INQUIRY FINDINGS - CALOCA

Police officers can appeal findings of misconduct that are sustained at a Board of Inquiry Hearing. These are referred to as *Caloca* appeals, in reference to the court cases that established the officers' right to appeal.<sup>2</sup>

In the *Caloca* appeal process, an administrative law judge (ALJ) from the State Office of Administrative Hearings conducts an "independent re-examination" of the decision. The PRC must prove, by clear and convincing evidence, that the sustained finding should be upheld.

One *Caloca* appeal was filed in 2018, and it was heard and decided that year. In that case, the ALJ overturned the PRC's sustained finding...

This table shows the outcome of appeals decided each year from 2014 to 2018.

Year	PRC Sustained Findings Appealed	Caloca Ruling
2018	(1 case) 1 allegation	1 allegation overturned ( <i>Unfounded</i> )
2017	(1 case) 1 allegation	1 allegation upheld ( <i>Sustained</i> )
2016	(1 case) 1 allegation	1 allegation upheld ( <i>Sustained</i> )
2015	(1 case) 1 allegation	1 allegation overturned ( <i>Not Sustained</i> )
2014	(1 case) 1 allegation	1 allegation overturned ( <i>Unfounded</i> )

<sup>2</sup> See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433.



## VIII. POLICY WORK, TRAINING, AND OUTREACH

### 1. COMMISSION RESTRUCTURING – CHARTER AMENDMENT

The PRC undertook a major task in 2018, of drafting a proposed amendment to the City Charter to broaden the PRC's powers and strengthen its authority. This was in response to a City Council referral of late 2017. In its present form, the PRC is an advisory body only, without the ability to establish policies or impose discipline. Moreover, under the City Charter, the City Manager has authority over the performance and administration of all staff, including the Police Department. Accordingly, creation of an independent body with decision-making authority requires that it be established by amending the Charter.

The PRC formed a **COMMISSION REFORM SUBCOMMITTEE**, consisting of **Commissioners Perezvelez (Chair), Allamby, Roberts, and Sherman**. This group worked diligently in a compressed time frame, holding ten meetings over five weeks. In contrast to typical subcommittee meetings, which usually draw little public attention, between five and ten members of the public came to Subcommittee meetings, and were allowed to provide their suggestions. Both the PRC Officer and PRC Investigator attended as well, not only to provide administrative support, but to offer their insights on the day-to-day workings of the PRC, relay their views as to needed changes, and furnish information on other oversight agencies' practices.

The Subcommittee crafted a proposed Charter amendment, which the full Commission considered over two meetings, where they heard additional input from the community and from Police Chief Greenwood. The Commission revised the Subcommittee's draft slightly and submitted it to the City Council in June. The Council further modified the proposal and directed the City Manager to commence meet-and-confer proceedings with affected unions. While this did not leave enough time for resolution with the unions in time to place a measure on the November 2018 ballot, meet-and-confer is continuing into 2019, and could result in a Charter amendment proposal for the 2020 ballot.

### 2. POLICY REVIEW

A policy review is an examination by the commission of a particular BPD policy to determine whether the department has faithfully executed the policy or whether to recommend changes to the policy. Policy reviews are initiated by one of three ways: a





member of the public files a PRC Policy Complaint; the City Council refers a policy issue to the Commission; or the Commission on its own initiative votes to conduct a policy review.

### **FAIR & IMPARTIAL POLICING**

Much of the activity in 2018 related to addressing apparent race-based disparities in policing built on significant milestones in 2017. In November 2017, the PRC published and submitted to the City Council, "Towards Fairness & Impartiality – Report and Recommendations from the Berkeley Police Review Commission," which found significant disparities in pedestrian and traffic stop, search, and yield rates, between Whites and African Americans and Latinos. The report included an examination of recommendations from the Center for Policing Equity (CPE), which had been performing an analysis of five years of BPD stop data and issued an interim draft report in July 2017.

In April 2018, the City Council accepted the PRC's report, and referred some of its key recommendations, supplementing prior recommendations on this subject, to the City Manager to develop an action plan for implementation. Then in May, the CPE issued its final report. CPE representatives presented their findings at a Commission meeting that was attended by dozens of community members and BPD command staff and other officers. When the BPD's September 2018 report back to the Council did not occur, the PRC pressed the police chief to prioritize the implementation of the PRC and CPE recommendations.

### **BODY-WORN CAMERA POLICY**

The BPD began using body-worn cameras (BWCs) in October 2018. The PRC had approved a recommended policy for the use of BWCs in 2016, following extensive subcommittee work. The BWC policy issued shortly before the deployment of the cameras had been revised following negotiations with the police union. The PRC began its review of the policy in late 2018, and expects to complete this review in early 2019. Staff anticipates that footage from body-worn cameras will be helpful evidence in its investigations and at Board of Inquiry hearings.

### **SURVEILLANCE TECHNOLOGY USE & COMMUNITY SAFETY ORDINANCE**

In 2018, the City Council adopted a Surveillance Technology Use & Community Safety Ordinance, based on an ordinance proposed by the PRC. The ordinance sets up a process for the acquisition and use of surveillance technologies by all City departments.



which includes a public discussion of potential intrusions into civil liberties and privacy rights implicated by using a particular surveillance technology, to ensure that any such intrusions are outweighed by the benefits of that technology. PRC review is a part of that process.

### **OTHER POLICY ACTIONS**

Other recommendations the PRC made in 2018 include:

- Supported a policy for BPD's use of its new specially equipped panel van, with one proposed language change regarding its deployment during unlawful assemblies.
- Expressed its desire to the City Manager that the City develop a "good governance accountability plan" for the BPD to establish annual goals, a training plan, a budget plan, data sources and metrics to aid in internal and external evaluations of the department's effectiveness, and regular audits of assets and expenses.
- Requested that the City Council order a performance and financial audit of the BPD to assess how the BPD is using its financial and human resources, including whether some tasks performed by sworn officers could be carried out by non-sworn personnel.

### **SUBCOMMITTEES**

Ad-hoc (temporary) subcommittees are established as needed to address BPD policy issues and policy complaints by members of the community, and to research and provide recommendations to the full commission pertaining to other police-related issues or referrals from City Council.

Each subcommittee is comprised of two to four commissioners, appointed by the PRC Chairperson. The PRC Ordinance allows for members of the general public to serve on subcommittees. Representatives from the Berkeley Police Department often attend PRC subcommittee meetings. In addition to the Commission Reform Subcommittee described above, the following Subcommittees were active in 2018:

#### **MUTUAL AID PACTS SUBCOMMITTEE**

**Commissioners Lippman (Chair), Matthews**

The Commission forms a subcommittee each year to review BPD's mutual aid agreements and memoranda of understanding with other law enforcement agencies and organizations (referred to as the "MOU Compendium"). By ordinance, the BPD must submit this compendium to the City Council each year for review and approval. Of the dozens of





agreements submitted by the BPD each year, the PRC generally focuses on the new or revised agreements, and selects others of particular interest.

The Mutual Aid Pacts Subcommittee that made recommendations to the PRC in 2018 met in December 2017. Based largely on the subcommittee's advice, the PRC recommended to the City Council in March 2018 the following: 1) cease participation in the Urban Shield exercises; 2) place a one-year moratorium on the BPD's participation in the Northern California Regional Intelligence Center (NCRIC); 3) modify the Law Enforcement Mutual Aid Plan; 4) approve the MOU with the U.S. Dept. of Homeland Security, Immigration and Customs Enforcement with certain provisos; and 5) approve all other agreements and understandings.

**JUNE 20, 2017 SUBCOMMITTEE (Review of BPD Response at City Council Meeting)  
Commissioners Roberts (Chair), Prichett, Matthews  
Public member Elliott Halpern**

The PRC formed the June 20, 2017 Subcommittee in 2017 to investigate whether the police response on the night of a special City Council meeting was appropriate. The meeting generated considerable community interest, as the BPD's continued participation in the Urban Shield exercise was being addressed. At the end of the meeting, BPD arrested two protesters who rushed the dais, and the commotion spilled onto the street, where a protester was struck on the head, allegedly by a police officer wielding a baton. In January 2018, the Commission voted to send the Subcommittee's draft report to the police chief for review and comment; however, the chief said that he had to withhold comment until litigation related to the evening's activity was concluded. The lawsuit was still ongoing as of the end of 2018.

**HOMELESS ENCAMPMENTS**

**Commissioners Prichett (Chair), Sherman, Yampolsky**

This Subcommittee continued the work it started in 2017, holding meetings in conjunction with the Homeless Commission's homeless encampments subcommittee to look into the BPD's involvement in dismantling homeless encampments and evaluate the City's development on a policy for taking and storing the personal property of those without shelter. The subcommittee ended its tenure while awaiting a comprehensive policy regarding the treatment of homeless persons to be finalized by the City Council.



## **LEXIPOL POLICIES**

### **Commissioners Perezvelez (Chair), Ramsey, Yampolsky**

This Subcommittee was given the sizeable responsibility of reviewing the BPD's operational and administrative policies, rules, and procedures, as they are transitioned from General Orders, Police Regulations, and Training and Information Bulletins to the Lexipol policy format. First, the full Commission received a presentation from Chief Greenwood, his staff, and Lexipol representatives about how the Lexipol system works and how the BPD intended, where appropriate, to tailor the Lexipol language to best reflect Berkeley standards. As the subcommittee is reviewing the converted policies, it is comparing them to the former policies and probing BPD staff, who are present at all subcommittee meetings, about any substantive policy changes. The subcommittee began meeting in late June 2018 and is expected to continue its work well into 2019. Groups of policies approved by the subcommittee were (and continue to be) brought to the full Commission for further review and approval; the Commission has returned a few policies to the Subcommittee for further scrutiny.

## **GENERAL ORDERS ON CROWD CONTROL**

### **Commissioners Prichett, Calavita**

This Subcommittee met once to review the Commander's Guide to Crowd Control & Crowd Management, which was a final task of this subcommittee, which had worked in 2016 to follow up on the numerous recommendations stemming from the review of Black Lives Matters protests of December 2014.

## **PRIORITIZING SAFETY FOR SEX WORKERS**

### **Commissioners Ramsey (Chair), Calavita, Matthews Public member Julie Leftwich**

Formed late in 2018, this Subcommittee met once, and is expected to conclude its work in 2019. This group was convened to consider amending a policy regarding victim and witness assistance, to protect sex workers from arrest for certain offenses when they report that they are the victim of or witness to a sexual assault or other violent crime.

## **2. TRAINING AND OUTREACH**

- The PRC Officer, the PRC Investigator, Commissioner Allamby, and Police Chief Greenwood attended the 24th Annual NACOLE Conference in St. Petersburg, Fla. in October. The National Association for Civilian Oversight of Law Enforcement is a non-profit comprised of agencies and individuals working to establish and improve





oversight of law enforcement in the U.S. The conference gives PRC staff and commissioners the opportunity to attend training sessions and educational workshops, and to meet and compare notes with other oversight practitioners from around the country and the Bay Area about both common and unique challenges of police oversight in their communities. Chief Greenwood was a panelist in a session on Law Enforcement and the Homeless, sharing the BPD's approach to interactions with this vulnerable population.

- At the Berkeley Police Chief's invitation, Commissioner Ramsey joined him and other members of his command staff in attending the annual conference of the **International Association of Chiefs of Police** in October. The conference, a multi-day event in Orlando, offered dozens of educational and training opportunities.
- In October, a BPD sergeant conducted a presentation for the PRC on **Tactical De-escalation**. Commissioners learned about tactical principles, how officers are trained to recognize escalating behavior, and when they should use de-escalation techniques.
- This year's outreach efforts to publicize the work of the Police Review Commission included Commissioners staffing a table at the **Berkeley Juneteenth Festival** in June. Additionally, some Commissioners participated locally in **National Night Out** in August, an evening of neighborhood strengthening and crime prevention awareness.

## **BPD COMMENDATIONS**

In recognition of outstanding service to the community, the Commission extended commendations to 101 BPD police officers and civilian staff of the BPD in 2018.





## IX. MEETINGS AND HEARINGS

2018

Type of Meeting or Hearing	Number
Regular PRC Meetings	20
Special PRC Meetings	2
Boards of Inquiry (BOI) (including 2 continued hearings)	6*
BOI Special Meetings	1
June 20, 2017 (Review of BPD Response at City Council Meeting)	2
Homeless Encampments	2
Commission Reform	11
General Orders on Crowd Control, etc.	1
Lexipol Policies	7
Prioritizing Safety for Sex Workers	1
<b>TOTAL</b>	<b>53</b>

\* One of the six cases brought to a BOI was dismissed because the complainant did not come to the hearing. Dismissal is required under the PRC Regulations for failure to appear.



## 2018 MEETINGS AND HEARINGS

### January

4	June 20, 2017 (Review of BPD Response at City Council Meeting)
10	June 20, 2017
10	Regular Meeting
12	BOI, Complaint #2428
16	Homeless Encampments
24	Regular Meeting
31	Homeless Encampments

### February

14	Regular Meeting
22	BOI, Complaint #2434
28	Regular Meeting

### March

14	Regular Meeting
19	Commission Reform
23	Commission Reform
27	Commission Reform
28	BOI Special Meeting
28	Regular Meeting
29	Commission Reform

### April

2	Commission Reform
3	BOI, Complaint #2437
5	Commission Reform
9	Commission Reform
11	Regular Meeting
12	Commission Reform
16	Commission Reform
19	Commission Reform
25	Commission Reform
25	Regular Meeting
30	BOI, Complaint #2438

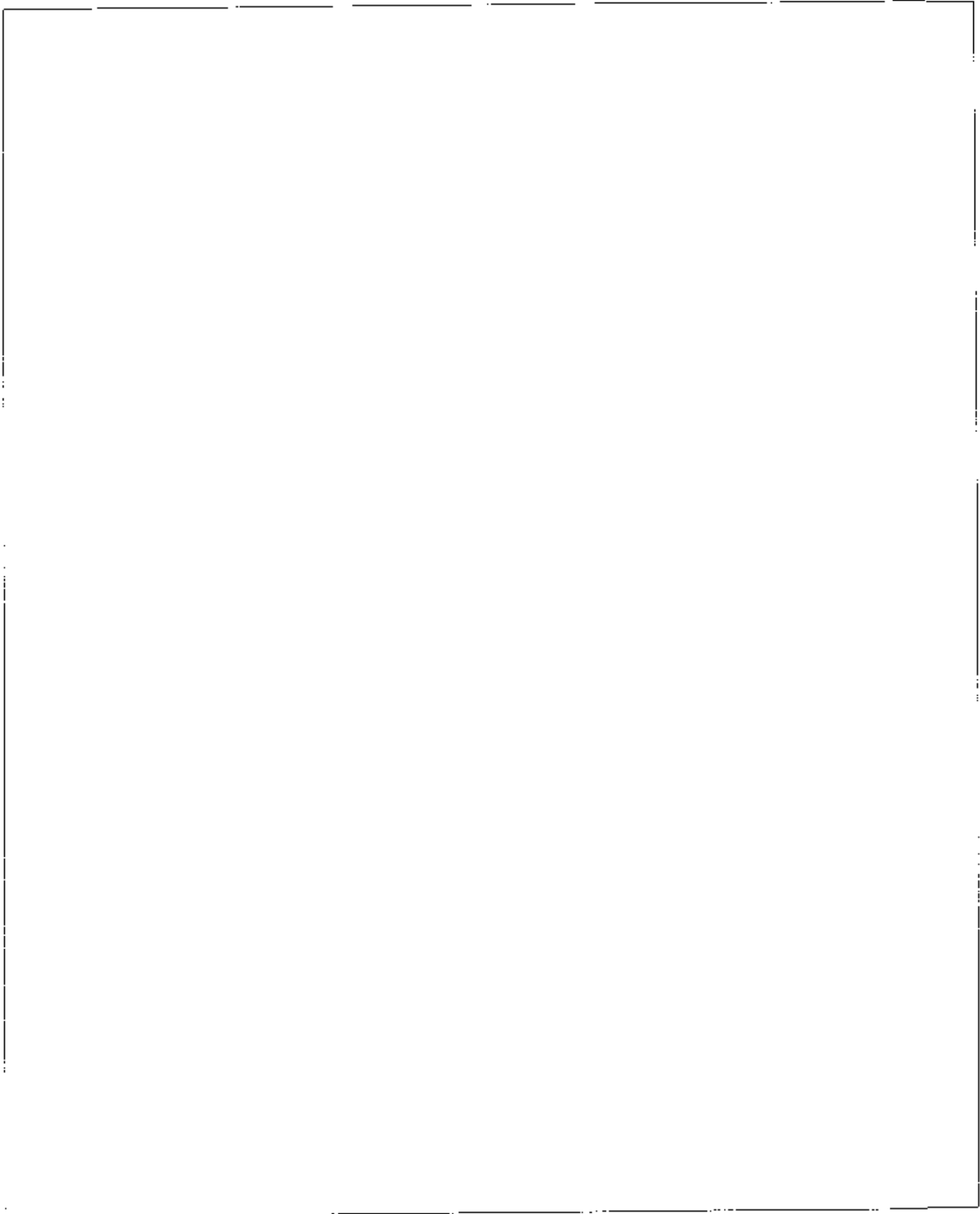
### May

7	Special Meeting
9	Regular Meeting
23	Regular Meeting



<b>June</b>	
7	General Orders on Crowd Control, etc.
13	Regular Meeting
27	Lexipol Policies
27	Regular Meeting
<b>July</b>	
11	Regular Meeting
25	Regular Meeting
<b>August</b>	
8	Lexipol Policies
29	Lexipol Policies
31	BOI, Complaint #2442*
<b>September</b>	
12	Regular Meeting
17	Lexipol Policies
20	BOI, Complaint #2439
26	Lexipol Policies
26	Regular Meeting
<b>October</b>	
10	Lexipol Policies
10	Regular Meeting
17	Special Meetingp
24	Regular Meeting
<b>November</b>	
7	Lexipol Policies
14	Regular Meeting
<b>December</b>	
12	Regular Meeting
13	Safety for Sex Workers Meeting

\* Dismissal for failure to appear.





Police Review Commission (PRC)

September 11, 2019

To: Honorable Mayor and Members of the City Council  
From: George Perezvelez, Chairperson, Police Review Commission  
Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

**Summary:** This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

**Background:** The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen. The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

**Final action:** At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

Honorable Mayor and Members of the City Council  
Proposed Berkeley Police Department Policy 422, Automated License Plate Readers  
September 11, 2019  
p. 2

The above action was approved by the following vote: Moved/Seconded  
(Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez,  
Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager  
Andrew Greenwood, Chief of Police  
David White, Deputy City Manager  
PRC Commissioners

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## **Automated License Plate Readers (ALPRs)**

### **422.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### **422.2 POLICY**

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

### **422.3 ADMINISTRATION**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### **422.3.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

### **422.4 USE OF THE ALPR**

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

#### **422.5 DATA COLLECTION AND RETENTION**

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ~~ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.~~

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.



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- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not showing violations will not be transferred to the server.

#### **422.6 ACCOUNTABILITY**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **422.7 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
  1. The name of the agency.

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2. The name of the person requesting.
  3. The intended purpose of obtaining the information.
  4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### **422.8 SCOFFLAW ENFORCEMENT**

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

- (a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

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with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Lee, Katherine

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**From:** Chris Gilbert <chris@gilbertbiz.com>  
**Sent:** Tuesday, September 10, 2019 7:37 PM  
**To:** PRC (Police Review Commission); Arreguin, Jesse L.; Arreguin, Jesse L.; 'Sophie Hahn'  
**Subject:** Solano Stroll and Police assault rifles

Police Review Commission  
Mayor Arreguin  
Councilperson Hahn,

At the Solano Stroll last Sunday Berkeley police had assault rifles draped over their fronts. Albany police had none and when asked they said none were being carried.

This is unacceptable at a crowded family oriented event. What good can weapons like this do in such a crowd? What is the police dept thinking?

Chris Gilbert  
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