



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(approved)

September 9, 2015
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

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

Present: Commissioner Alison Bernstein (Chair)
Commissioner Jerry Javier
Commissioner George Lippman
Commissioner George Perezvelez (Vice Chair)
Commissioner Terry Roberts
Commissioner Ann Rogers
Commissioner Michael Sherman (left 9:30 p.m.)
Commissioner Ari Yampolsky

Absent: Commissioner Bartlett

PRC Staff: Katherine J. Lee, PRC Officer and Beneba Thomas, PRC Investigator.

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery (both left 8:30 p.m.), Sgt. Benjamin Cardoza, Ofc. David Bartalini (left 9:30 p.m.)

At the Chair's request, a moment of silence was observed for three law enforcement officers recently slain: Steven Vincent, Louisiana State Trooper; Deputy Sheriff Darren Goforth, Harris Co., TX; Police Lt. Charles Gliniewicz, Fox Lake, Ill.; and for Michael Tyree, an inmate beaten to death in Santa Clara County jail.

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 5 speakers.

4. APPROVAL OF MINUTES

Motion to approve Special Meeting minutes of August 12, 2015.

Moved/Seconded (Perezvelez/Rogers) **Motion Carried by general consent**

5. CHIEF OF POLICE'S REPORT

Capt. Frankel reported on the Chief's behalf that the department will be presenting its mid-year crime report to the City Council next week, and that they can make a presentation to the PRC if desired.

6. OLD BUSINESS (discussion and action)

a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.

i) Continue review and approval of or changes to BPD recommendations in its report of the December 6 & 7, 2014 events.

Motion that all votes that the PRC has already taken regarding the BPD's Recommendations will not be reconsidered.

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

Ayes: Bernstein, Perezvelez, Roberts, Rogers, and Yampolsky.

Noes: Javier, Lippman, Sherman Abstain: None Absent: Bartlett

Motion to adopt, as an alternative to BPD Recommendation #22, Commissioner Bernstein's proposal:

The use of CS gas on December 6 is a cause of major concern. Not only is it unclear whether the actions of the crowd warranted such use, it is unclear how decisions were made to continue to deploy CS gas, and whether the continued use was necessary. Careful review of the policies regarding both the initial use of CS gas and its continued deployment must be undertaken by the BPD in conjunction with the PRC. New policies need to be drafted more carefully delineating when and how CS gas should be used in crowd management and control situations.

If and when CS gas is deployed, a public announcement regarding the impending use should be made, as well as radio broadcast to all law enforcement personnel.

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

Ayes: Bernstein, Javier, Perezvelez, Roberts, Rogers, Sherman, and Yampolsky.

Noes: None Abstain: Lippman Absent: Bartlett

Motion that the PRC adopt, as an alternative to BPD Recommendation #23: The PRC recommends that an operational policy regarding the use of CS gas be established delineating a removal and transport process as well as establishing a secure triage area for the treatment of affected personnel and members of the public.

Moved/Seconded (Perezvelez/Sherman)

Friendly amendment that the PRC add the proposed language above to BPD's Recommendation #23.

(Moved by Roberts; Accepted by Perezvelez)

Motion, as amended, Carried

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

Noes: None

Abstain: None

Absent: Bartlett

Regarding Recommendation #25, the Commission, by general consent, tentatively agreed to the following, pending clarification with the BPD:

- **Improve accountability for the deployment and use of less-lethal munitions and CS gas.**
- **PRC recommends that BPD and mutual aid responders perform an inventory of less-lethal munitions and CS gas both before and after an incident.**
- **Whenever an officer uses less-lethal force in a crowd control situation, that officer is responsible for preparing an individual report of such use.**

ii) Review and approve findings.

By general consent, the Commission made a few changes to the staff's draft Findings and will review the next revision at the next meeting.

iii) Discuss remainder of report and its structure.

(Carried over to next meeting)

b. Disclosure of full Suspicious Activity Reports by BPD.

By general consent the Commission agreed to agendaize Mutual Aid Pacts for the September 24, 2015 meeting, and asked the PRC Officer to report back regarding the grounds claimed by BPD for not furnishing full SARs to the Commission.

7. NEW BUSINESS (discussion and action)

a. Review General Order W-1, Right to Watch

(the Commission discussed this item after Item 7.b.)

By general consent, the Commission agreed to have the PRC Officer write a letter to the Chief, with copies to Capt. Harris and the City Manager,

expressing the PRC's concern that the BPD revised the Right to Watch policy without consulting the PRC or obtaining any other public input; and, because of the significance of the policy, request that until such time as community input is received and the PRC is consulted, the BPD revert to following the Right to Watch Training Bulletin.

- b. Discuss proposed work plan for addressing PRC tasks, including reviving the work of the Transgender General Order Subcommittee and the possible establishment of several new subcommittees.

By general consent, the Commission agreed to schedule Special Meetings on September 16 and October 8, 2015, to have more time to devote to the investigation, with the goal of taking final action on it by its October 21 meeting, and to cancel the Regular Meeting of October 28.

- c. Clarification of Motions to Lay on the Table and to Postpone Indefinitely
(Not discussed.)

8. CHAIR'S REPORT

None.

9. PRC OFFICER'S REPORT

A BOI was concluded last week. No individual complaints were filed in May, June, or July, but five have been filed from August to date.

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

11. PUBLIC COMMENT

There was one speaker.

12. ADJOURNMENT

**Motion to adjourn the meeting carried by general consent.
Meeting was adjourned at 10:10 p.m.**