



Police Review Commission (PRC)

A handwritten signature in black ink, appearing to read "Sherman", is written in the upper right corner of the page.

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(Approved)

April 23, 2014
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER AND ROLL CALL BY CHAIRPERSON SHERMAN AT 7:07 P.M.

Present: Chairperson Michael Sherman
Vice Chair Alison Bernstein
Commissioner Barbara Allen
Commissioner John Cardoza
Commissioner Karen Lowhurst
Commissioner Ann Rogers
Commissioner Kiran Shenoy
Commissioner Oliver Zerrudo

Absent: Commissioner George Perezvelez

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan (left approx. 8:40 p.m.), Sgt. Katherine Smith, Ofc. David Bartalini

2. APPROVAL OF AGENDA

By consensus, the Commission moved item #6.a. ahead of item #5, and approved the remainder of the agenda.

The Chair announced that Commissioner Cardoza agreed to remove his item regarding Tasers from the agenda, at the request of the Deputy City Manager, until this issue is referred to the PRC from City Council.

3. PUBLIC COMMENT

There were two speakers.



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4. APPROVAL OF MINUTES

Motion to approve minutes of April 9, 2014

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Shenoy, Sherman, and Zerrudo.

Noes: None Abstain: Rogers Absent: Perezvelez

6. OLD BUSINESS (discussion and action)

- a. Barbara Lipson of SEEDS Community Resolution Center spoke about her organization's mediation of complaints that are referred by the PRC, and answered questions.

5. CHIEF OF POLICE'S REPORT

Chief Meehan praised his department for their response to the Wooden Duck fire. Year-to-date crime numbers are reasonably good: property crimes and burglaries are down; auto thefts are up. The FY 2015 budget is balanced, but the City is projecting deficits for FYs 2016, 2017 and 2018. Emergency Preparedness Fair will be held this Saturday at the North Berkeley BART Station. The BPD will be using Nixle.com to send targeted messages; this is a 6-month pilot project starting in May; BPD is the first City department to use social media. The Chief and PRC Officer will work out dates for the BPD to make presentations on their false alarm project and the beat analysis. The Commission asked for a presentation on HEATwatch (Human Exploitation And Trafficking), and to invite the Commission on the Status of Women.

6. OLD BUSINESS (discussion and action)

- b. Regarding finding of factual innocence: Further discussion of BPD's policy regarding referral of cases to the Alameda County District Attorney for prosecution and what, if any, written policies exist.

Chief Meehan reported that this has been assigned to Capt. Harris, and said she will provide a status report by the next Commission meeting.

- c. Recommendations on proposed revisions to the PRC's Regulations.

See Attachment to Minutes for language proposed and approved. Each vote to approve included an understanding that implementation will not occur until all proposals from the Regulations Subcommittee have been considered, and necessary review by others has been completed.

Motion to approve proposed amendment #1, as revised.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None Abstain: None Absent: Perezvelez

Motion to approve proposed amendment #2, as revised.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

Motion to approve proposed amendment #3, as revised.

Moved/Seconded (Rogers/Allen) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

Motion to table proposed amendment #4.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Sherman, and Zerrudo.

Noes: Shenoy

Abstain: Rogers

Absent: Perezvelez

Motion to approve proposed amendment #5, as revised.

Moved/Seconded (Allen/Rogers) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

Motion to approve proposed amendment #6, as presented.

Moved/Seconded (Rogers/Lowhurst) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

- d. Topics and questions the PRC would like the City's Mental Health Division, Mental Health Commission Chair, and BPD Crisis Intervention Team to address at the May 14, 2014 meeting.

Motion to have Commissioner Rogers review Copwatch report on death case and work with the PRC Officer to formulate topics and questions for presenters at May 14, 2014 meeting.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

7. NEW BUSINESS (discussion and action)

- a. Request that the City Manager report on discipline resulting from BOI sustained findings.

Motion to send a letter from the PRC Chair to the City Manager inquiring about the number of sustained findings in a BOI since 2000 that resulted police officer discipline.

Moved/Seconded (Shenoy/Lowhurst) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

- b. Possible action to allow for more careful review of the BPD submission of Suspicious Activity Reports to the Northern California Regional Intelligence Center.

Commissioner Bernstein, who placed this item on the agenda, asked that the matter be given to the Mutual Aid Pacts Subcommittee.

- c. Consider reconstituting the Mutual Aid Pacts Subcommittee.

By consensus, the Commission voted to re-establish the Mutual Aid Pacts Subcommittee.

Chair Sherman then appointed Commissioners Bernstein, Lowhurst and Zerrudo to this Subcommittee.

8. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

- a. Accreditation Subcommittee

No report.

- b. Drone Subcommittee

The City Council Worksession on Drones is scheduled for April 29, 2014 at 5:30 p.m. The PRC Officer reported that she informed former Commissioners Morris and Dubal, who worked extensively on the PRC's report and recommendation on Drones, about the worksession.

- c. Regulations Subcommittee

Subcommittee Chair Bernstein reported that the next meeting is scheduled for April 28, 2014, at 6:00 p.m., and they hope to have their work complete in six to eight weeks.

- d. Fair and Impartial Policing Subcommittee

No report.

- e. Wearable Video Cameras Subcommittee

First meeting has been scheduled for April 30, 2014, at 6:00 p.m.

9. PRC OFFICER'S REPORT

There are 12 active complaints; 2 are in mediation. This afternoon, Martiza Martinez was honored for her 15 years of service to the City of Berkeley, 13 of them with the PRC. The venue for the May 10th NAACP Forum, "Berkeley Police – Power & Abuse" has been confirmed for the South Berkeley Library from 2:00 – 5:00 p.m. Response to inquiry about whether Commission wishes to participate in this year's Solano Stroll, on September 14, was yes. At its April 29, 2014 meeting, the Council will be considering a referral to the City Manager regarding having non-sworn employees investigate after-hour noise complaints. Next regular meeting will be in three weeks.

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Chair Sherman announced he will be taking a leave of absence for the months of May, June and July. Vice-chair Bernstein will be the acting PRC Chair during that time.

11. PUBLIC COMMENT

There were no speakers.

12. ADJOURNMENT

Motion to adjourn this meeting.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

Meeting was adjourned at 9:35 p.m.

THE UNIVERSITY OF CHICAGO
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**Attachment to Police Review Commission minutes of April 23, 2014 meeting
(Redlines show amendments proposed and approved at the meeting.)**

Proposed amendment #1

Section II. A. 2. Initiating the Process – Filing a Complaint -- Filing Period [new subsection c., regarding pending criminal action]

“c. If the complainant is the subject of a criminal proceeding related to the matter of the complaint, the time for the complainant to file a complaint shall be tolled until the criminal matter has been adjudicated or dismissed.”

Motion to approve proposed amendment #1, as revised.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None Abstain: None Absent: Perezvelez

Proposed amendment #2

Section II. A. 4. b. Initiating the Process – Filing a Complaint -- Sufficiency of Complaint

“Policy complaints will be brought to the Commission for discussion or action, within 30 calendar days of filing or as soon thereafter as practicable, at a the next regularly scheduled meeting of the PRC if the 30 days has expired, for discussion or action. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.”

Motion to approve proposed amendment #2, as revised.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None Abstain: None Absent: Perezvelez

Proposed amendment #3

Section VI. A. 1. Hearings – Scheduling and Notice -- BPD Schedules

“The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Whenever possible, hearings shall not be held on an officer's regular days off. Hearings shall not be scheduled during an officer's previously scheduled vacation, or any authorized leave of absence. PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.”

Motion to approve proposed amendment #3, as revised.

Moved/Seconded (Rogers/Allen) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None Abstain: None Absent: Perezvelez

Proposed amendment #4

Section VI. D. 8. Hearings – Procedure (related to testimony at hearing)

“The subject officers and any witness officers will be called into the hearing room to testify separately. Any subject officers' representative(s) will be allowed to remain in the hearing room

through the duration of all testimony. Each subject officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.”

Motion to table proposed amendment #4.

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

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Sherman, and Zerrudo.

Noes: Shenoy

Abstain: Rogers

Absent: Perezvelez

Proposed amendment #5

Section VII. B. Deliberations and Findings – Majority Vote

“All action by the Board under Section VII of these regulations shall be by majority vote of those Commissioners present. Each dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.”

Motion to approve proposed amendment #5, as revised.

Moved/Seconded (Allen/Rogers) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez

Proposed amendment #6

Section VII. F. Deliberations and Findings – Petition for Rehearing

“2. After receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it at its next regularly scheduled meeting for which there is adequate time to meet Brown Act requirements. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 60 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period and the requirement that the Commission’s investigation be completed within one year, provided the request is granted; tolling reverts back to the date the request is submitted and continues until the hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.”

“3. If a petition for rehearing is granted, the Board of Inquiry shall be composed of the same Commissioners who presided over the original hearing unless circumstances make such composition impossible.”

Motion to approve proposed amendment #6, as presented.

Moved/Seconded (Rogers/Lowhurst) **Motion Carried**

Ayes: Allen, Bernstein, Cardoza, Lowhurst, Rogers, Shenoy, Sherman, and Zerrudo.

Noes: None

Abstain: None

Absent: Perezvelez