Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(Approved)

July 9, 2014
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. **CALL TO ORDER & ROLL CALL BY ACTING CHAIRPERSON BERNSTEIN AT 7:05 P.M.**

Present: Vice Chair Alison Bernstein
Commissioner Barbara Allen
Commissioner John Cardoza
Commissioner Karen Lowhurst
Commissioner George Perezvelez
Commissioner Elliott Halpern (Temporary appointment)

Absent: Commissioners Michael Sherman, Ann Rogers, Oliver Zerrudo

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Cynthia Harris, Lt. Randolph Files, Sgt. Katherine Smith, Officer David Bartalini

2. **APPROVAL OF AGENDA**
Item #6.b. of the agenda, BPD presentation of the beat analysis, will be postponed to the July 23 meeting. With that change the agenda was **approved** by consensus.

3. **PUBLIC COMMENT**
There was one speaker.

4. **APPROVAL OF MINUTES**

Under Item 6.b., Chair's report, Commissioner Bernstein asked that she be referred to as the Acting Chair, not the Vice Chair, and that Commissioner Perezvelez be referred to as the Acting Vice Chair.

Motion to approve minutes of June 25, 2014, with the above changes.
Moved/Seconded (Allen/Lowhurst) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

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

Capt. Harris reported that property crimes are up; violent crimes are down.

6. **PRESENTATION BY POLICE DEPARTMENT**

a. Internal Affairs

Capt. Harris described the governing policies, staffing, procedures, and operations of the BPD Internal Affairs Bureau.

7. **OLD BUSINESS** (discussion and action)

a. Policy review: how the BPD learns of and responds to judicial findings of misconduct by BPD officers in which the BPD was the lead investigative agency and, in particular, where the court finds that the BPD failed to adequately investigate the case.

After discussion, the Commission took no action.

b. Reconsider Regulation Section V.D.2., regarding Responsibilities of BOI Commissioners – Commissioner Conduct.

Motion to adopt a revised Section V.D.2 as proposed, with correction to the word "conducted," instead of "conduct," in the first sentence.
Moved/Seconded (Perezvelez/Bernstein) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

See Attachment to Minutes for language approved.

c. Revise votes from June 25, 2014 meeting regarding amendments to Regulations that affect confidentiality provisions, to provide that they go into effect immediately.

Motion that new Section IV and changes to V.D. be effective immediately:
Moved/Seconded (Allen/Lowhurst) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

Motion that changes to the Preamble be effective immediately:
Moved/Seconded (Lowhurst/Perezvelez) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

See Attachment to Minutes for language approved.

8. **NEW BUSINESS** (discussion and action)

a. Proposed amendments to Regulations: Section II.A.2.b. (Filing period), Section VI.B., C., and D. (Hearings), and Section VII (Deliberation and Findings).

Motion to approve deletion of Section II.A.2.b.
Moved/Seconded (Lowhurst/Allen) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

Motion to approve proposed amendments to Sections VI.B., VI.C., and VI.D., with further changes to VI.C.4.b., and omitting additional language in new VI.D.8. allowing complainants to ask questions through the BOI pending an inquiry with the City Attorney as to whether this affects the perceived impartiality of the Commissioners.
Moved/Seconded (Lowhurst/Perezvelez) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, and Perezvelez.
Noes: None Abstain: Halpern Absent: Rogers, Sherman, Zerrudo

Motion to approve proposed amendments to Section VII.C.
Moved/Seconded (Perezvelez/Allen) **Motion Carried**
Ayes: Allen, Bernstein, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: Cardoza Absent: Rogers, Sherman, Zerrudo

Motion to approve proposed amendments to Sections VII.E.
Moved/Seconded (Perezvelez/Allen) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

See Attachment to Minutes for language approved.

b. Security camera database. Review information from City of Fremont.
By consensus, the Commission asked staff to obtain additional information about similar databases, or registries, from the cities of Richmond, San Francisco, and Oakland.

9. **SUBCOMMITTEE REPORTS & RECOMMENDATIONS** (discussion and action)

a. Accreditation Subcommittee
No report.

b. Regulations Subcommittee
Last set of proposed regulation changes will be brought to the Commission's next meeting.

c. Fair and Impartial Policing Subcommittee
Subcommittee currently inactive but will want to monitor implementation of the policy in the fall.

d. Wearable Video Cameras Subcommittee
Subcommittee Chair Cardoza said they are hoping to have a physical demonstration of the equipment by another jurisdiction at its July 23, 2014 meeting.

e. Mutual Aid Pacts Subcommittee
Next meeting needs to be scheduled.

10. PRC OFFICER'S REPORT

No new complaints filed since the last meeting; the complainant who did not appear for mediation will be presented for closure at the next meeting. PRC Officer has contacted the Chief regarding a link from the BPD's website to the PRC's website, and about accompanying BPD officers during National Night Out. Information regarding the cases heard within 120 days of filing in which the BOI issued a sustained finding were sent to the City Manager yesterday. The 2013 Annual Report has been completed (and was distributed to Commission members).

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

12. PUBLIC COMMENT

There were no speakers.

Closed Session

13. VOTE ON WHETHER TO ACCEPT LATE-FILED COMPLAINT.

Complaint #2354.

Motion to approve Late File as timely.

Moved (Halpern) **Motion Failed for lack of a second.**

Motion to deny Late File for failure to show good cause for lack of timeliness, with the understanding that the timely-filed complaint on a related incident involving the same officer would proceed.

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

Ayes: Allen, Bernstein, Cardoza, and Perezvelez

Noes: None Abstain: Halpern, Lowhurst Absent: Rogers, Sherman, Zerrudo

End of Closed Session

14. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

The Acting Chair announced that the Commission voted to reject the late-filed complaint in Complaint #2354 by four affirmative votes, no nays, two abstentions, and three absent.

15. ADJOURNMENT

The meeting was **adjourned** by consensus at 9:45 p.m.

Proposed amendment to Section V.D.2.
(redlined)

D. Responsibilities of BOI Commissioners

1. Confidentiality *(Amended June 25, 2014)*

   a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.

   b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

2. Conduct

   In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall:
   publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint;

   ~~a. Commissioners shall not~~ publicly comment on ~~any complaints.~~

   ~~b. Commissioners shall not discuss~~ any of the facts or analysis of a pending complaint~~.~~; or

   ~~c. Commissioners shall not~~ pledge or promise to vote in any particular manner in a pending complaint.

Motion to adopt a revised Section V.D.2 as proposed, with correction to the word "conducted," not "conduct," in the first sentence.
Moved/Seconded (Perezvelez/Bernstein) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

Proposal that amendments to Regulations affecting confidentiality that were approved June 25, 2014 (as modified above), be effective immediately

PREAMBLE

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations.

Accordingly, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley, as long as they are consistent with the powers granted to it by the enabling Ordinance, current California case law, the Public Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300-3319), and Penal Code sections 832.5 and 832.7, governing the confidentiality of peace officer personnel records.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it shall not be disclosed to any unauthorized person or organization, and it is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law.

(NEW) SECTION IV: CONFIDENTIALITY OF PERSONNEL MATTERS

A. Responsibilities of PRC Commissioners

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, no Commissioner shall disclose it to any unauthorized person or organization.

B. Conduct

1. It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure.

2. At any proceeding in which confidential information was distributed to the Commissioners, each Commissioner shall return all confidential material to the PRC staff at the close of the proceeding or as soon thereafter as practicable.

SECTION V. BOARDS OF INQUIRY (will be renumbered SECTION VI.)

D. Responsibilities of BOI Commissioners

1. Confidentiality

   a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.

   b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

2. Conduct

   In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall: publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.

3. Violation

   a. A violation of Sections VI.D.1.a., VI.D.2.a., or VI.D.2.b. above, before or during a BOI shall automatically disqualify a Commissioner from a BOI.

   b. In addition, a Commissioner or PRC staff may agendize an alleged violation of Sections VI.D.1.a., VI.D.2.a., or VI.D.2. for discussion and action at a regularly scheduled meeting. Any action adverse to a Commissioner requires a two-thirds vote of the Commissioners present. Such action may include: notice of the violation to the Commissioner's appointing City Councilmember; a communication to the City Council; or a prohibition from sitting on future BOIs for the remainder of the Commissioner's term.

Motion that new Section IV and changes to V.D. be effective immediately:
Moved/Seconded (Allen/Lowhurst) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

Motion that changes to the Preamble be effective immediately:
Moved/Seconded (Lowhurst/Perezvelez) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

Highlighted sentence = approved by Commission on April 23, 2014

COMMUNICATION No. 1815

II. INITIATING THE PROCESS

A. Filing a Complaint

1. Complaint Form

   Complaints and policy complaints must be filed on a form provided by the PRC and, except as provided in section 3, signed by the complainant. Non-policy complaint forms will include information about the difference between mediation and an investigation; and language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint. Non-policy complaint forms will conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board of Inquiry shall be given under oath."

2. Filing Period

   a. To be considered timely, a complaint must be filed within 90 calendar days of the alleged misconduct, except that the 90-day period shall be tolled when a complainant is incapacitated or otherwise prevented from filing a complaint. Any complaint filed after 90 calendar days of the alleged misconduct shall be dismissed, unless accepted as a late-file. A complaint filed between 91 and 180 calendar days of the alleged misconduct must include a late-file form, and 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 file in a timely fashion. The PRC Officer or Investigator will submit a late-file to the Commission for a vote in closed session at the next regularly scheduled meeting. Any complaint filed after 180 calendar days of the alleged misconduct will not be accepted.

   ~~b. For late-filed complaints, the subject officer(s) are not required to appear before a Board of Inquiry, and the Board's findings will not be considered in any disciplinary actions by the City Manager or the Chief of Police.~~

   ~~c.~~ b. 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 deletion of Section II.A.2.b.
Moved/Seconded (Lowhurst/Allen) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

VI. HEARINGS

B. Board of Inquiry Hearing Packet

No later than 10 business days before the hearing date, PRC staff shall distribute a Board of Inquiry Hearing Packet to the BOI members, the complainant, the subject officer(s), any representative(s), any witnesses, the DCO and the Chief of Police.

1. The BOI ~~members'~~ Hearing Packet distributed to the BOI members shall contain:
   a. The Report of Investigation referenced in Section III.~~E~~-F.
   b. Any supplemental evidence or analysis staff deems necessary.
   c. A copy of the complaint, if not contained in the Report of Investigation.
   d. Police reports and any other relevant documentary evidence, including evidence submitted by the complainant.
   e. The PRC ~~Officer's or the PRC Investigator's~~staff's recommendations, if any, concerning summary disposition or procedural matters.
2. The BOI hearing packet distributed to the subject officer(s), the officer's representative, the DCO, and the Chief of Police shall contain:
   a. Any supplemental evidence or analysis staff deems necessary.
   b. A copy of the complaint, if not contained in the Report of Investigation.
   c. Any evidence submitted by the complainant.
3. The BOI Hearing Packet distributed to the complainant shall ~~receive a Hearing Packet that~~ contains:
   a. A copy of the complaint
   b. Police reports and any other non-confidential, relevant documentary evidence, including evidence submitted by the complainant.
   c. A copy of the complainant's interview transcript.
4. Each witness shall receive a copy of his/her interview transcript.

C. Pre-Hearing Motions

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4. Continuances
   a. A continuance may be granted by a majority of the BOI. In considering whether to grant such a continuance, the BOI members shall consider the reason for the request; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; previous continuance requests; and other relevant information.
   b. A continuance request shall be presented to the BOI as soon as the cause for continuance arises. Whenever possible, requests for continuance shall be considered at a specially convened meeting of the BOI. Such a meeting shall be convened in accord with existing procedures and regulations.

c. A continuance shall not be granted in the absence of good cause.

d. A request for continuance made within 3 business days of the hearing date shall not be granted unless the ~~moving~~ requesting party ~~can demonstrate a grave~~ is unable to attend due to a personal emergency, or can demonstrate substantial ~~that will unduly~~ prejudice ~~him or her if the hearing is not continued~~if a continuance is denied

e. A continuance granted at the request of the subject officer shall toll any BPD disciplinary time period.

D. Procedure

1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO shall be present for all but the Commissioners' deliberations.

2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel's presence at the hearing.

3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative.

4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained.

5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous.

6. The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them.

7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer's representative may be present during the complainant's and the civilian witnesses' testimony. The complainant may make a statement or rely on the interview statements~~, .and will then answer questions from the subject officer(s) or the subject officer's representative(s) and the Commissioners~~ Questioning will then proceed as follows: a) Commissioners may ask questions; b) the subject officer or his or her representative may ask questions; c) Commissioners may ask follow-up questions. After questioning is completed, the complainant will have up to 15 minutes to provide a summary of his/her case and/or closing statement.

~~7.~~8. Before being excused, the complainant will be informed that he or she may submit written questions for the Commissioners to ask the subject officers. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.

~~8.~~9. 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.

~~9.~~ 10. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.

Motion to approve proposed amendments to Sections VI.B., VI.C., and VI.D., with further changes to VI.C.4.b., and omitting additional language in new VI.D.8. [highlighted in gray] allowing complainants to ask questions through the BOI pending an inquiry with the City Attorney as to whether this affects the perceived impartiality of the Commissioners.
Moved/Seconded (Lowhurst/Perezvelez) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, and Perezvelez.
Noes: None Abstain: Halpern Absent: Rogers, Sherman, Zerrudo

VII. DELIBERATION AND FINDINGS

. . . .

C. Standard of Proof

No complaint shall be sustained unless it is proven by ~~clear and convincing~~ a preponderance of the evidence presented at the hearing or otherwise contained in the record. ~~"Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.~~ Proof by preponderance of the evidence means that at the close of the hearing, the state of the evidence is such that the allegation is more likely to be true than not true.

Motion to approve proposed amendments to Section VII.C.
Moved/Seconded (Perezvelez/Allen) **Motion Carried**
Ayes: Allen, Bernstein, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: Cardoza Absent: Rogers, Sherman, Zerrudo

E. Findings Report and Notification

1. Within 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing.

2. Within ~~30~~15 calendar days of the hearing, the PRC office shall submit a Finding Report, together with the Hearing Packet, to the City Manager and the Chief of Police, except that for late-filed complaints, the Findings Report shall be filed within 30 calendar days of the hearing.

Motion to approve proposed amendments to Sections VII.E.
Moved/Seconded (Perezvelez/Allen) **Motion Carried**
Ayes: Allen, Bernstein, Cardoza, Lowhurst, Perezvelez, and Halpern.
Noes: None Abstain: None Absent: Rogers, Sherman, Zerrudo

I. GENERAL

A. Application of Regulations-Confidentiality of Complaint Proceedings. The following regulations govern the receipt and processing of complaints submitted to the Police Review Commission (PRC or Commission). All Board of Inquiry (BOI) and Commission proceedings relating to the investigation of an individual complaint against an officer shall be closed to the public. Records of these investigations shall be treated as confidential and will not be disclosed to members of the public. Any public records included in, or attached to, any investigative reports shall remain public records, and copies shall be made available to the complainant and subject officer.

B. Definitions. The following definitions shall apply in these regulations:

1. *Administrative Closure:* Complaint closure before a BOI hearing. Administrative closure requires a majority vote of the Commissioners, in closed session, at a regularly scheduled meeting, and does not constitute a judgment on the merits of the complaint.

~~1.~~2. *Aggrieved Party:* Any person directly affected by the alleged police misconduct. Only an aggrieved party may file a complaint, except that a complaint by an aggrieved minor must be filed by the minor's parent or guardian.

~~2.~~3. *Allegation:* A specific assertion of police misconduct by a complainant or the Commission.

~~3.~~4. *Board of Inquiry (BOI):* Three Commissioners impaneled to hear and render findings on complaints; a BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.

~~4.~~5. *BOI Hearing Packet*: Evidence and information for the hearing, issued no later than 10 business days before the scheduled hearing.

~~5.~~6. *Commissioner*: A resident of Berkeley appointed by a City Council member or the Mayor to serve on the PRC.

~~6.~~7. *Complaint*: A declaration that alleges misconduct by a Berkeley Police Department (BPD) employee (including employees of the Public Safety Communications Center) while engaged in official duties.

~~7.~~8. *Complainant*: An~~y person~~ aggrieved party who files a complaint with the PRC~~; is considered a witness to the complaint during a BOI hearing~~.

~~8.~~9. *Duty Command Officer (DCO):* A sworn BPD officer designated by the BPD's Chief of Police to appear at a Board of Inquiry and answer procedural questions clarifying BPD policy.

~~9.~~10. *Findings Report*: Summary of the BOI's findings, provided to the City Manager and the Chief of Police ~~within 30 calendar days of the hearing~~.

~~10. *Investigation*: A formal process of resolving complaints.~~

11. *Mediation*: A process of reaching a mutually agreeable resolution to a ~~resolving~~ complaint~~s informally, without investigation, in conjunction with~~ which is facilitated by a a local mediation agency~~, if both the complainant and the subject officer agree. Mediation may be considered in all cases except those involving the death of an individual~~.

12. *Policy Complaint*: A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised.

13. *PRC Investigator*: A person employed by the City Manager and assigned to the PRC to investigate complaints.

14. *PRC Officer*: A person employed by the City Manager and assigned to the PRC as the office administrator and secretary to the Commission.

15. *Report of Investigation*: Report issued within ~~75~~ 80 calendar days of the filing date of the complaint.

16. *Subject Officer*: A sworn BPD officer, or other BPD employee, against whom a complaint is filed.

17. *Summary Dismissal*: Dismissal of any or all of the allegations in a complaint prior to the start of a BOI hearing; requires a unanimous vote of the BOI Commissioners, and constitutes a judgment on the merits.

~~18. *Supplemental Report of Investigation*: Report issued no later than 10 business days before a BOI hearing, as part of the BOI Hearing Packet.~~

~~19.~~ 18. *Toll*: Stop the running of the clock/investigation timeline.

~~20.~~ 19. *Witness Officer:* A sworn BPD officer, or other BPD employee, who has personal knowledge of events described in a complaint, but is not the subject officer.

SECTION V. BOARDS OF INQUIRY

E. Function

1. The BOI members shall review the confidential Hearing Packet and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and advise the Chief of Police and the City Manager of its findings.

2. ~~The BOI members shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding dismissed citations.~~

SECTION VI. HEARINGS

E. Evidence

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. ~~Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. "Hearsay evidence" is evidence of a statement that was made by someone other than the witness testifying at the hearing.~~

1. Evidence shall be taken in accordance with the following provisions:

   a) The complainant and subject officer(s) shall have the right to testify and refer to any relevant documentary evidence and exhibits. If the complainant or subject officer does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.

   b) Oral evidence shall be taken only under oath.

   c) The Chairperson shall exclude irrelevant and unduly repetitious evidence.

   d) The Chairperson shall exclude unruly or disruptive persons from the hearing.

   e) The Chairperson will conduct the hearing subject to being overruled by a majority of the BOI members. BOI members shall be primarily responsible for obtaining testimony. The PRC Officer or his/her designee will answer Commissioner's questions on the evidence, points of law, and procedure.

   f) The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.

g) If the BOI needs additional evidence or an opinion from the City Attorney to reach its findings, it will continue the hearing to a future date, unless the parties agree to allow the Board to receive such material in writing without reconvening.

h) If upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.

2. Either party may present to the BOI evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the BOI shall accept those findings as true.