

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**April 8, 2015
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**
 - a. Special and Regular Meetings of February 25, 2015.
 - b. Special Meeting of March 19, 2015.
 - c. Regular Meeting of March 25, 2015.
- 5. CHAIR'S REPORT**
- 6. CHIEF OF POLICE'S REPORT**
Budget, staffing, training updates, and other items.
- 7. PRC OFFICER'S REPORT**
Status of Complaints; announcements.
- 8. OLD BUSINESS (discussion and action)**
 - a. Policy review of McKinley Avenue staging: report from BPD and Commission response
 - b. 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: further

discussion and action on how to proceed, including review of documents and video supplied by BPD.

- c. Continue review of mutual aid practices and policies: further discussion and action.
- d. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.
- e. Standing Rules for PRC: review and act on second draft.
From: Commissioner Bernstein
- f. Marijuana enforcement report: whether to make a standing request to the BPD that they prepare a detailed report like the one they did in June 2014, that will put the figures they provide into context.
From: Commissioner Bernstein

9. NEW BUSINESS (discussion and action)

- a. National Public Safety Telecommunicators Week (April 12 - 18): consider whether and how to recognize BPD dispatchers.
- b. Absence of BPA representation at PRC meetings.
From: Commissioner Bernstein

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

- a. Regulations Subcommittee
Update/schedule meeting date.
- b. Suspicious Activity Reports Subcommittee
Update. Next meeting date April 13, 2015 at 5:45 p.m.
- c. Transgender General Order Subcommittee
Update/schedule meeting date.

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 981-6342 (V) or 981-6345 (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, 3rd floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

COMMUNICATIONS FOR PRC MEETING

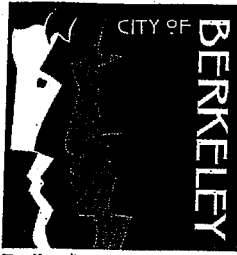
April 8, 2015

MINUTES

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COMMUNICATIONS

Communication #4377 – Memo from City Attorney dated February 18, 2015: Request for Opinion Regarding Disclosure of Berkeley Police Department Internal Affairs' records to the PRC.	Page 19
Communication #4331 – Police Review Commission Standing Rules Draft dated April 2, 2015.	Page 23
Communication #1741 – PRC Additional Information Request: Semi-Annual Marijuana Report revised July 22, 2014.	Page 27
Communication #4393 –National Public Safety Telecommunicators Week April 12-18, 2015; information and samples.	Page 31
Communication #4331 – Electronic mail dated March 23, 2015 sent to the PRC Chair: Police Review Commission request from Ferguson Missouri.	Page 33
Communication #4331 – Letter from PRC Vice-Chair dated March 23, 2015 to the Berkeley City Council re: Annual Meetings of Commission Appointees.	Page 35
Communication #1760 – Letter from a citizen to the PRC dated March 25, 2015: Support SB 608, the Right to Rest Act.	Page 37
Communication #4331 – Thank-you letter from the PRC to Dean Choudhry of the University of California, Berkeley School of Law, dated March 31, 2015 re Use of Booth Auditorium on February 25, 2015.	Page 41



Police Review Commission (PRC)

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

**February 25, 2015
6:00 P.M.**

Booth Auditorium, Boalt Hall
(Bancroft Way at Piedmont Ave.)
University of California, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 6:07 P.M.

Present: Vice Chair George Perezvelez (arrived 6:50 p.m.)
Commissioner George Lippman
Commissioner Karen Kiyo Lowhurst
Commissioner Ann Rogers
Commissioner Michael Sherman
Commissioner Bulmaro Vicente
Commissioner Lowell Finley (*temporary assignment*)
Commissioner Harvey Kletz (*temporary assignment*)

Absent: Commissioners Barbara Allen, Benjamin Bartlett

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Capt. Cynthia Harris, Sgt. Joseph Okies, Sgt. Benjamin Cardozo, Ofc. David Bartalini

2. WORKSESSION

A. Community and Police Relations

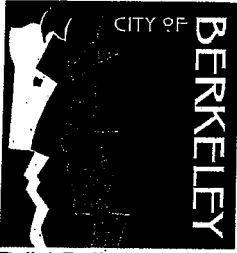
1) Public Comment

There were 14 speakers

2) Police Review Commission Discussion

3. ADJOURNMENT

By consensus, the meeting was adjourned at 7:35 p.m.



Police Review Commission (PRC)

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

**February 25, 2015
7:00 P.M.**

Booth Auditorium, Boalt Hall
(Bancroft Way at Piedmont Ave.)
University of California, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 7:36 P.M.

- Present: Vice Chair George Perezvelez
Commissioner George Lippman
Commissioner Karen Kiyo Lowhurst (left 9:45 p.m.)
Commissioner Ann Rogers
Commissioner Michael Sherman
Commissioner Bulmaro Vicente
Commissioner Lowell Finley (*temporary assignment*)
Commissioner Harvey Kletz (*temporary assignment*) (left 8:35 p.m.)
- Absent: Commissioners Barbara Allen, Benjamin Bartlett
- PRC Staff: Katherine J. Lee, PRC Officer
- BPD Staff: Capt. Cynthia Harris, Sgt. Joseph Okies, Sgt. Benjamin Cardozo, Ofc. David Bartalini

2. APPROVAL OF AGENDA

(Occurred after public comment.) By consensus, the agenda agreed to the Chair's proposal to incorporate item 9.c. into its discussion of item 8.c.

3. PUBLIC COMMENT

There was one speaker.

4. APPROVAL OF MINUTES

Regular Meeting of February 4, 2015.

By consensus, the minutes were approved as written.

5. CHAIR'S REPORT

The Chair noted that the latest marijuana enforcement report from the BPD is in the agenda packet for this meeting, and that discussion of the report will be agendaized for the next meeting.

6. CHIEF OF POLICE'S REPORT

No report this meeting.

7. PRC OFFICER'S REPORT

A report of active cases and their status was distributed. Commissioners were reminded to return signed confidentiality agreements. Commissioners Rogers, Perezvelez, Finley and Bernstein will attend the NACOLE Regional Forum on March 4. Clarification from the City Attorney's Office regarding public documents was relayed: if BPD releases a report to the public, its inclusion in a BOI packet does NOT have the effect of making the report confidential.

8. OLD BUSINESS (DISCUSSION AND ACTION)

a. Continue development of General Order regarding the treatment of transgendered persons.

Russell Bloom, Investigator from BART Independent Police Auditor's Office, made a presentation regarding BART's process in creating its general order on transgendered persons.

Motion to create a subcommittee to develop a General Order regarding the treatment of transgendered persons.

Moved/Seconded (Perezvelez/Lowhurst) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Kletz

Chair Bernstein appointed herself and Commissioners Perezvelez and Rogers to the Transgender General Order Subcommittee.

b. Establish rules of procedure for handling policy complaints and policy reviews.

Motion to adopt the proposed rules as written.

Moved/Seconded (Sherman/Vicente) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Kletz

c. Policy review regarding the events of December 6, 7, and 8, 2014, specifically focusing on the use-of-force General Order, the crowd control General Order, the use of tear gas, the limitation on movement of emergency vehicles, the allegations of non-engagement by BPD during the disturbances on December 7; the use of batons in crowd control; and the firing of projectiles into a crowd; review BPD documents obtained to date; further discussion and action, taking into account Council's referral to the PRC as noted in item 8.c. of this agenda.

Motion to direct the PRC Officer to start the process of drafting subpoenas to conduct the police investigations with assistance from Commissioners Finley, Lowhurst, and Lippman.

Moved/Seconded (Perezvelez/Rogers) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Kletz

- d. Mutual aid practices and policies: update from PRC Officer regarding applicable mutual aid orders, policies and other writings, including those from the Alameda County Sheriff's Office; further discussion and action.

The PRC Officer distributed information about mutual aid procedures from the State. After discussion, the Commission **agreed by consensus to continue the discussion to the next meeting.**

9. NEW BUSINESS (DISCUSSION AND ACTION)

- a. Use of police in-vehicle cameras and body-worn cameras by BPD: determine how to proceed on referrals from City Council on February 10 and possibly February 24.

By consensus, the Commission agreed that the matters should be reviewed by the full Commission for the time being, and directed the PRC Officer to gather and distribute General Orders for in-vehicle and body cameras from Oakland, Los Angeles, BART, and other agencies in her discretion, for further discussion at the next meeting.

- b. Changes to General Orders C-64 (Crowd Control), M-2 (Mutual Aid), and U-2 (Use of Force): determine on how to proceed on City Council's February 10 referral to review Oakland and San Francisco PD orders on crowd control and use of force, and any other policies deemed appropriate, to make appropriate recommendations to revise the BPD's general orders.

Motion to take up these issues after investigation of the events of December 2014 is completed.

Moved/Seconded (Rogers/Vicente) **Motion carried**

Ayes: Bernstein, Finley, Lippman, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: None Absent: Allen, Bartlett, Kletz, Lowhurst

- c. Investigation into police response to protests on December 6, 2014: determine how to proceed on City Council's February 10 referral to investigate: the appropriateness of using tear gas, other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control, the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents; have recommendations to the City Manager, Chief of Police and City Council no later than six months.

(Discussed in conjunction with item 8.c. above.)

d. Fair & Impartial Policing policy (General Order B-4): ask BPD about the status of implementation and plans for public reporting of demographic data.

By consensus, the Commission asked the PRC Officer to send a letter to the Chief asking him to report at the next meeting how reporting of the data will occur.

e. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.

By consensus, this item was tabled to the next meeting.

f. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.

By consensus, this item was tabled to the next meeting.

g. Urge Council Members and the Mayor to hold annual commissioners' meetings with their appointees.

From: Commission on Aging

By consensus, this item was tabled to the next meeting.

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (DISCUSSION/ACTION)

a. Regulations Subcommittee
No report.

b. Suspicious Activity Reports Subcommittee
The subcommittee will meet soon.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

12. PUBLIC COMMENT

There was one speaker. (This item was moved to occur after item 8.c.)

Closed Session

13. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2367.

Motion to approve administrative closure of complaint #2367, and to inform the complainant this is because she stated insufficient facts to enable the complaint to proceed.

Moved/Seconded (Rogers/Finley) **Motion carried**

Ayes: Bernstein, Finley, Perezvelez, Rogers, Sherman, and Vicente

Noes: None Abstain: Lippman Absent: Allen, Bartlett, Kletz, Lowhurst

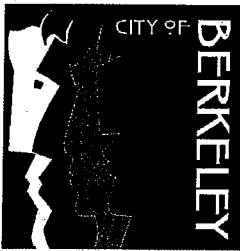
End of Closed Session

14. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

The vote to approve the recommendation for administrative closure of Complaint #2367 was announced.

15. ADJOURNMENT

By consensus, the meeting was adjourned at 10:20 p.m.



Police Review Commission (PRC)

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

**March 19, 2015
7:30 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR ALISON BERNSTEIN AT 7:44 P.M.

Present: Vice Chair George Perezvelez
Commissioner George Lippman
Commissioner Ann Rogers
Commissioner Michael Sherman
Commissioner Bulmaro Vicente
Commissioner Lowell Finley (*temporary assignment*)

Absent: Commissioners Barbara Allen, Benjamin Bartlett, Karen Kiyo Lowhurst

PRC Staff: Katherine J. Lee, PRC Officer

2. PUBLIC COMMENT

No speakers

3. NEW BUSINESS (discussion and action)

A. PRC's request to the BPD for access to unredacted materials related to December 2014 protests.

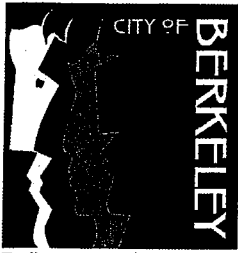
By general consent, the Commission asked the PRC Officer to:

-- email the Commissioners a document containing the Council's directives regarding the protests;

-- look into scanning the documents provided by BPD and making them available to Commissioners on a thumb drive.

3. ADJOURNMENT

By general consent, the meeting was adjourned at 8:35 p.m.



Police Review Commission (PRC)

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

**March 25, 2015
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR GEORGE PEREZVELEZ AT
7:05 P.M.**

Present: Commissioner Benjamin Bartlett
Commissioner George Lippman
Commissioner Michael Sherman
Commissioner Lowell Finley (*temporary assignment*)
Commissioner Bulmaro Vicente (arrived 7:30 p.m.)
Chairperson Alison Bernstein (arrived 7:35 p.m. and presided over the
meeting from that time)

Absent: Commissioners Barbara Allen, Karen Kiyo Lowhurst, and Ann Rogers

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Michael Meehan (left 8:30 p.m.), Capt. Andrew Greenwood (left
8:30 p.m.), Sgt. Joseph Okies, Sgt. Benjamin Cardoza

2. APPROVAL OF AGENDA

Vice-Chair Perezvelez asked that the meeting be adjourned in the memory of
Officer Michael Johnson; the PRC Officer asked that the Chair's report be moved to
later in the agenda and that Item 9.c., regarding body and in-car cameras be
removed from the agenda because its inclusion was in error. With those changes,
the agenda was **approved** by general consent.

3. PUBLIC COMMENT

No speakers.

4. APPROVAL OF MINUTES

The PRC Officer noted that the approval of the February 25, 2015 special and regular meeting minutes suffered from a procedural problem in that a motion was not made even though a vote was taken. The approval of these minutes will therefore be agendized for the April 8, 2015 meeting. Commissioner Sherman noted a typographical error in Item 6.

Motion to approve regular meeting of March 11, 2015, with the above changes.

Moved/Seconded (Sherman/Finley) Motion Carried

Ayes: Bartlett, Finley, Lippman, Perezvelez, and Sherman.

Noes: None **Abstain:** None **Absent:** Allen, Bernstein, Lowhurst, Rogers, and Vicente

5. CHAIR'S REPORT

(Moved to after Item #8.) No report.

6. CHIEF OF POLICE'S REPORT

Continuing to see dramatic increases in crime this year. In midst of developing budget. Still at 168 sworn officers. Carol Berry, the BPD's first female patrol officer, recently passed away. The week of April 13 is National Public Safety Dispatchers Week; PRC may want to consider some type of recognition of our dispatchers for the very difficult work they do.

7. PRC OFFICER'S REPORT

A list of active complaints was distributed. The Deputy City Manager and the BPA President are having a meeting March 31 preliminary to the meet-and-confer process regarding the PRC's Regulations for handling complaints. The City's MOU with the Center for Policing Equity for data collection on stops is being negotiated.

8. 2014 CRIME REPORT

Chief Meehan and Capt. Greenwood presented the 2014 crime report and answered questions.

9. 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: further discussion and action on how to proceed.

By general consent, the Commissioners:

- i. **Asked the PRC Officer to make copies of all documents supplied by the BPD available in electronic form;**

- ii. **Agreed that they would come into the PRC offices before the next regular meeting to view a group of video clips, with a list of things to look for; PRC Officer to divide the videos into logical groupings and write up the list;**

iii. Asked the PRC Officer to discuss with someone in I.T. the posting of a link on the PRC website announcing to the community a request for statements and video about the December protests, and creating a place/method for uploading such video; and to report back at the next meeting;

iv. Asked the PRC Officer to determine the feasibility of taking witness statements and timing of doing so.

b. Continue review of mutual aid practices and policies: further discussion and action.

By general consent, this item was tabled until the next meeting.

c. Use of police in-vehicle cameras and body-worn cameras by BPD: review General Orders of other agencies.

(Removed from agenda; erroneously placed.)

d. How to make the BOI process more responsive to complainants, and civilians generally, in light of City Attorney opinion re Possible Disclosure of BOI Findings Report to Complainants.

Motion to make an advisory recommendation to staff that they release civilian witness statements to complainants.

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

Ayes: Bernstein, Bartlett, Finley, Lippman, Perezvelez, and Vicente.

Noes: None Abstain: Sherman Absent: Allen, Lowhurst, Rogers

e. Discuss City Attorney opinion re Disclosure of BPD Internal Affairs' Records to the PRC.

By general consent, this item was tabled to the next meeting.

f. Standing Rules for PRC: review and comment on first draft.

By general consent, the Commission agreed to incorporate language provided by Commissioner Perezvelez and to vote on the next revised draft at the next meeting.

g. Marijuana enforcement report: review report for July – December 2014 and discuss additional information possibly needed.

The Chair asked to agendaize for the next meeting whether the Commission wants to make a standing request that the BPD prepare a report similar to the one presented last year, that contextualizes the figures they provide.

- h. Status of implementation of amendments to Regulations for Handling Complaints Against Members of the Police Department.

No action taken in light of PRC Officer's report.

10. SUBCOMMITTEE REPORTS & RECOMMENDATIONS (discussion and action)

- a. Regulations Subcommittee
No report.
- b. Suspicious Activity Reports Subcommittee
Subcommittee has met and its next meeting will be April 13 at 5:45 p.m.
- c. Transgender General Order Subcommittee
Subcommittee has met and needs to schedule meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

12. PUBLIC COMMENT

No speakers.

Closed Session

13. VOTE ON RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

Complaint #2371.

Motion to approve above-referenced file for administrative closure.

Moved/Seconded (Sherman/Finley) Motion Carried

Ayes: Bernstein, Bartlett, Finley, Lippman, Perezvelez, Sherman, and Vicente.

Noes: None **Abstain:** None **Absent:** Allen, Lowhurst, Rogers

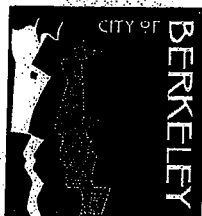
End of Closed Session

14. ANNOUNCEMENT OF VOTE RESULTS FROM CLOSED SESSION

The passage of the motion to approve the recommendation for administrative closure was announced.

15. ADJOURNMENT

By general consent, the meeting was **adjourned** at 10:00 p.m. in memory of San Jose Police Officer Michael Johnson, who was killed in the line of duty on March 24, 2015.




Office of the City Attorney

COMMUNICATION No. 4377

Date: February 18, 2015

To: Katherine J. Lee, PRC Officer

From: Zach Cowan, City Attorney

By: Sarah Reynoso, Assistant City Attorney 

Re: Request for Opinion Regarding Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

Background

At its January 14, 2015 meeting, the PRC requested an opinion from the City Attorney on whether the PRC could obtain from the BPD Internal Affairs Bureau ("IAB") Division its records regarding prior complaints against the subject officer. The PRC believes that having access to the subject officers IAB complaints and findings may provide relevant information for a PRC Board of Inquiry ("BOI") hearing a complaint against that subject officer. The PRC does not currently have access to the IAB complaint investigation files.

You also asked whether the Police Chief could disclose to the PRC whether he had imposed discipline based on a PRC BOI sustained finding of wrong doing.

Issues

1. Can the PRC obtain access to subject officers IA complaint investigation file records as part of the PRC's complaint investigation process?
2. Can BPD disclose to the PRC whether discipline has been imposed as a result of a PRC BOI sustained finding of wrong doing?

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981.6960
E-mail: ZCowan@cityofberkeley.info

Conclusion

1. No. These records are confidential personnel records under Penal Code Section 832.7.
2. No. This information is also confidential personnel records under Penal Code Section 832.7.

Discussion

IAB is responsible for investigating BPD internal personnel complaints and citizen complaints filed directly with IAB. IAB also conducts parallel investigations of all citizen complaints filed directly with the PRC. BPD established IAB to comply with Penal Code Section 832.5, which requires law enforcement agencies to establish a process to investigate complaints against public safety officers.

Pursuant to Penal Code Section 832.7, IAB's complaint investigation records are confidential. Section 832.7 (a), provides, in part, that "Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."

Consistent with Section 832.7, BPD General Order P-26 identifies all IAB files as confidential and limits access to these records to "the employee, the Chief of Police, authorized administrative staff, the employee's Division Commander, the City Attorney, Internal Affairs Bureau personnel, the Human Resources Director and the City Manager and others as required by law." BPD G.O. P-26 *Retention of Records* – 56. Thus, the only city employees who have access to IAB records are those that have some role in the disciplinary process of a police officer or the attorneys that represent the City in legal actions

In *Brown v. City of Berkeley* (1976) 37 Cal.App.3d 223, the Court invalidated a provision in the PRC ordinance which purported to give the PRC authority to make disciplinary recommendations of police officers. The Court held that this section of the PRC ordinance conflicted with City of Berkeley Charter Section 28, which vests in the City Manager sole authority over the discipline of all city employees. *Id.* at 233. Thus, while the PRC Ordinance grants the PRC the authority to investigate complaints against police officers, the PRC has no power or authority to discipline or recommend disciplinary action of a police officer. IAB complaint records cannot be disclosed to the PRC because it has no authority to recommend discipline.

Memo to Katherine Lee, PRC Officer

February 18, 2015

Page 3 Re: Disclosure of Berkeley Police Department Internal Affairs' records to the PRC

For the same reasons cited above, the Chief cannot disclose to the PRC whether he has imposed discipline based on sustained findings of wrongdoing by the PRC, as those records are confidential personnel records under Section 832.7.

cc: Christine Daniel, City Manager
Dee Williams-Ridley, Deputy City Manager
Mark Numainville, City Clerk
Opn. Index II.E.1; II.G.8.a.

Police Review Commission
Standing Rules
(revised as of X/X/15)

COMMUNICATION No. 4331

A. PURPOSE

These Standing Rules are established by the Police Review Commission to ensure transparency and efficiency of our operations.

B. AMENDMENTS AND REVISIONS

Amendments and revisions to these Standing Rules shall be adopted by a majority vote of the Police Review Commission, except that the Commission may not adopt rules that conflict with the enabling Ordinance, Commissioners' Manual, or Regulations for Handling Complaints Against Members of the Police Department.

C. AGENDA ITEMS – REGULAR MEETINGS

Individual commissioners shall submit agenda items to the commission secretary by 12:00 noon one week before the meeting date. (This will almost always be a Wednesday.)

D. COMMUNICATIONS

Individual commissioners shall submit communications to be included in the agenda packet to the commission secretary by 12:00 noon one week before the meeting date to ensure inclusion in the packet. Communications received after this deadline and before 3:00 p.m. on the meeting day will be distributed in hard copy at the meeting, and may also be distributed to commissioners via email. If communications are received after 3:00 p.m. on the meeting day, the commission secretary will make every effort, but cannot guarantee, to have hard copies available at the meeting.

E. MEETING PROCEDURES

1. Agenda items shall be introduced by the commission member or staff member who proposed the item. The chair shall allow an initial period for discussion. When a motion is introduced and seconded, the chair may set a time limit of no less than two minutes for each commissioner for additional comments before putting the matter to a vote.
2. During discussion of a motion, the chair shall make every attempt to allow alternating positions to be heard.
3. Action on a motion may be by either voice or general consent. In either case, the chair shall ask the commission secretary to repeat the motion before the action.

4. Guest speakers who are not on the agenda may address the commission only by general consent, or upon a formal motion.
5. None of these procedural rules shall supersede the procedures set forth in Robert's Rules of Order.

F. PUBLIC COMMENT

The chair, subject to the consent of the commission, may determine the time limit for each speaker and the total number of speakers.

G. POLICY COMPLAINTS AND REVIEWS

1. An inquiry into a policy, when initiated by a civilian filing a policy complaint form, is a "policy complaint."
 - a) The procedures for handling a policy complaint are set forth in Section II.A.4.b. of the Regulations for Handling Complaints Against Members of the Police Department..
 - b) Additionally, a public comment period shall be agendized immediately preceding consideration of the policy complaint, limited to comments on that complaint. Policy complainants will be allowed to speak for five minutes. Other members of the public will be allowed up to three minutes; the time allotted is subject to the discretion of the chair, who will consider the number of persons wishing to speak. Commissioners may ask policy complainants brief questions. The BPD will be given an opportunity to respond to the commission.
2. A commission-initiated policy review may commence upon a majority vote of the commissioners.
 - c) Commissioners shall then determine how to proceed. Possible actions include, but are not limited to: considering the issue as whole commission, assigning a commissioner to research the issue, asking staff to investigate or research, or establishing a subcommittee. If a subcommittee is created it will seek BPD involvement in its policy review and, upon completing its review, will present its conclusions and recommendations to the full commission.
 - d) The full commission may recommend to the BPD, City Manager, or City Council that the BPD adopt a new policy, revise an existing policy, or take no action.

H. REGULAR MEETINGS

1. Regular meetings shall be held on the second and fourth Wednesday of the month, except in the months of August, November, and December. The commission shall not meet in August, and shall meet only on one Wednesday of the month in November and December. Exceptions shall be made when a meeting day falls on a religious holiday.
2. Regular meetings shall commence at 7:00 p.m., and shall be held at the South Berkeley Senior Center and other locations as may be determined by the commission.

I. ELECTIONS

The elections for Chair and Vice-Chair shall occur at the first regular meeting in January whenever possible.

J. MUTUAL AID AGREEMENTS

The commission shall constitute a mutual aid subcommittee no later than the first meeting in February of each year to review the pacts between the BPD and other law enforcement entities.

K. ANNUAL REPORT

The commission secretary shall endeavor to present the annual report for the commission's approval no later than June 1 of each year. The Foreword shall be written by the commissioner who served as chair in the year of the report.

L. FAMILIARITY WITH BERKELEY POLICE DEPARTMENT

Within the first 6 months of their appointment, newly-appointed commissioners shall endeavor to:

- 1) complete a ride-along with a sworn police officer, and
- 2) meet with Chief of Police and his/her command staff.

M. KNOWLEDGE OF APPLICABLE LAWS AND RULES

Commissioners should be generally knowledgeable of the Police Review Commission's enabling Ordinance (Ordinance No. 4644-N.S.; B.M.C. Chapter 3.32), the Regulations for Handling Complaints Against Members of the Police Department, and these Standing Rules. They should also bring copies of these documents to all commission meetings.

PRC Additional Information Request; Semi-Annual Marijuana Report

COMMUNICATION No. 1741

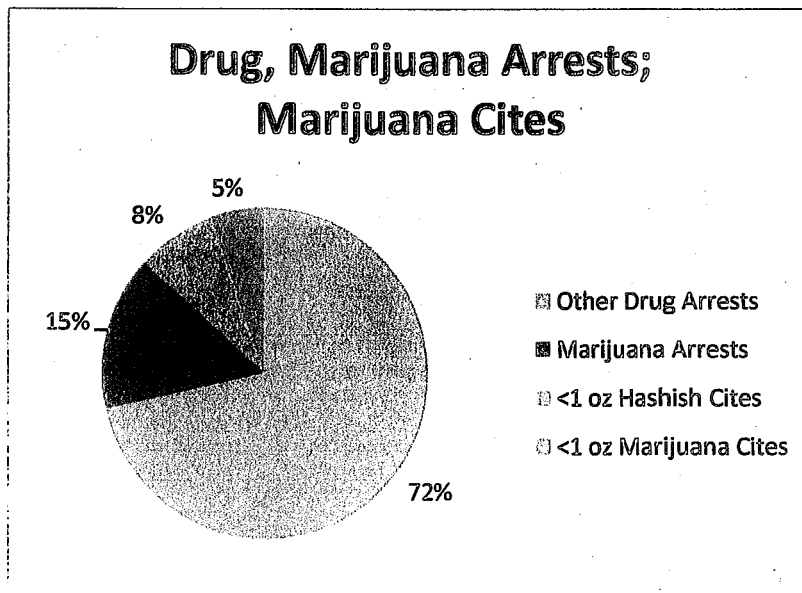
Semi-annually the Berkeley Police Department prepares a report that documents the total number of arrests and citations related to marijuana enforcement. In that report we specifically document those arrests and citations that document the following Health and Safety code sections:

- 11357(a) – Possession of Concentrated cannabis.
- 11357(b) – Possession of not more than an ounce of marijuana.
- 11357(c) – Possession of over one ounce of marijuana.
- 11357(d) – Adult possession on school grounds during school activity.
- 11357(e) – Minor possessing marijuana on school grounds during school activity.
- 11358 - Cultivation of marijuana.
- 11359 - Possession of marijuana or hashish for sale.
- 11360 - Sales of marijuana or hashish.
- 11361 - Inducing a minor to sell or use marijuana.

In the PRC meeting on April 9, 2014 the PRC requested additional information regarding the Berkeley Police Department's enforcement of marijuana laws. Below are information requests posed by Commissioner Sherman, in his April 18, 2014 letter to Chief Meehan. Our responses appear after each question below.

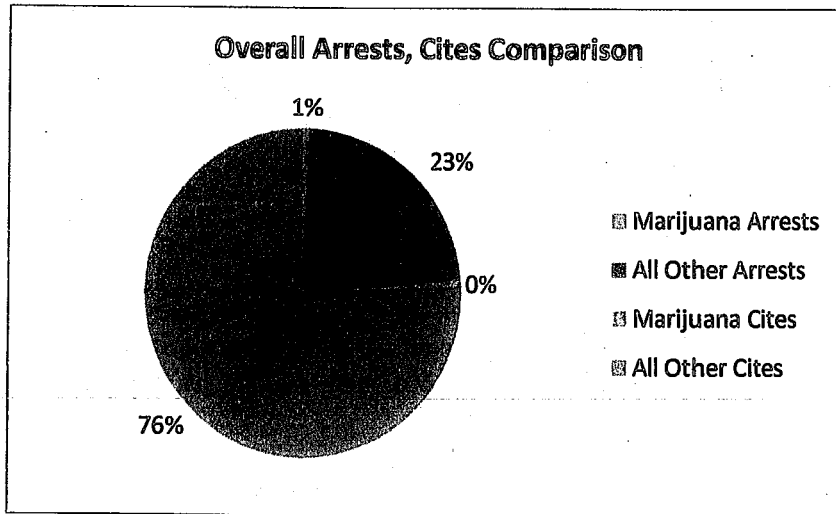
1. The total number of Narcotics arrests within the six month time period reflected in the report (July 1 – December 31, 2013).

Response: Our records show 284 total narcotics arrests during that period. Included in that total are 38 citations for either <1 oz. hashish or <1 oz. marijuana, 43 arrests for other marijuana offenses (e.g. possession for sale) and 203 arrests for other drugs!

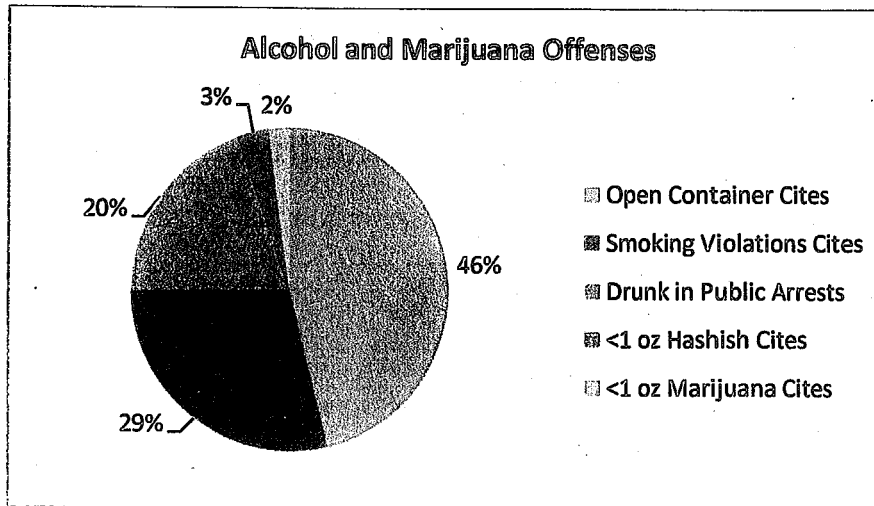


It may be helpful to consider the number of marijuana arrests and citations, compared with other arrests and citations during the same period. Our records show 4,610 citations issued. Of those, twenty three (.5%) were issued for <1oz of hashish, and fifteen (.3%) were issued for <1oz of marijuana. Therefore, of 4610 citations issued for the period, thirty eight (.8%) were marijuana cites.

Our records show 1,432 arrests made during the period. Of those, forty three (3 %) arrests were made for marijuana offenses. The chart below illustrates all citations and arrests, and breaks out marijuana related arrests and citations.



It may also be helpful to compare the number of citations and arrests related to alcohol, as compared to marijuana. The following chart shows 321 Open Container cites, 201 Tobacco cites, 138 "Drunk in Public" arrests, twenty three <1 oz hashish cites, and fifteen <1oz marijuana cites.



- The total number of arrests involving only marijuana related offenses. For each of these arrests, the quantity of marijuana seized as noted in the police report.

Response: There were 20 cases that document charges for marijuana-*only* related offenses (Arrests only, not citations). Other than those statutes delineated in the semi-annual report, included are cases that also documented associated offenses of 1203.2 PC (Probation violation), 11364.1 H&S (Possession of drug paraphernalia), 647(f) PC (Public intoxication) and warrant arrests. See the attached spreadsheet for the list of these cases and the quantity of marijuana seized as noted in the police report. There are multiple lines in many cases representing multiple pieces of marijuana evidence associated with that case.

3. For each of the arrests involving only marijuana related offenses, the total number that were referred for prosecution to the District Attorneys' office, the outcome of each of these cases, and the total weight of marijuana in each case as identified by the criminalist.

Response: All 20 of the cases that involved arrests for only marijuana related offenses were referred to the District Attorney's office for prosecution. Thirteen were charged or resulted in probation revocation. Seven were not charged, or are unknown dispositions. Alameda County crime lab outcomes are not maintained directly in our records system's fields, and would therefore require case-by-case research.

4. For all arrests involving violations of Health and Safety Code section 11357(b), possession of less than an ounce of marijuana, a copy of the police report, redacted to exclude the name of the arrestee and the arresting officers.

Response: 11357 (b) offenses are typically documented through an infraction citation, without a formal report. Only two cases with narrative were located; both involved the arrests of juveniles.

5. The total number of arrests involving marijuana related offenses and additional offenses, with a listing of the additional charges.

Response: There were 28 cases that document the arrest of subjects for marijuana offenses as well as other crimes.ⁱⁱ

ⁱ The other drug-related offenses for which arrests were made are as follows:

- 11350(a) H&S - Possession of a narcotic / controlled substance.
- 11351 H&S - Possess or purchase for sale narcotics / controlled substance.
- 11351.5 H&S - Possess or purchase for sale cocaine base.
- 11352 H&S - Transport for sale a narcotic / controlled substance.
- 11366 H&S - Keep a place to sell a narcotic / controlled substance.
- 11370.1(a) H&S - Possess a controlled substance while armed.
- 11370.2(a)H&S - Enhancement of prison terms for prior drug convictions.
- 11375(b) H&S - Possess for sale / sell controlled substance.
- 11377(a) H&S - Possess a controlled substance.
- 11378 H&S - Possess a controlled substance for sale.
- 11379.6(a) H&S - Manufacture etc. a controlled substance.
- 4060 B&P - Possess a controlled substance without a prescription.

ⁱⁱ Other associated offenses included:

- 484e(d) PC - Use an access card without consent.
- 530.5(a) PC - Identity theft.
- 13.52.010 BMC - Trespassing.
- 148(a) PC - Obstruct or resist a police officer.
- 166(a) PC - Contempt of court.
- 11350(a) - Possession of a narcotic / controlled substance.
- 647(f) PC - Public intoxication.
- 381 PC - Possession of toluene.
- 3056 PC - Parole violation.
- 30305 PC - Prohibited person own or possess ammunition.
- 29900(a)PC - Illegally possess a firearm with a prior violent offense.
- 29800(a)PC - Felon or addict possess a firearm.
- 186.22(a)PC - Participate in a criminal street gang.
- 186.22(b)PC - Participate in a criminal street gang with other conviction.
- 1203.2 PC - Probation violation.
- 25850(a)PC - Carry a loaded firearm in public.
- 12022(a)(1) PC - Armed with a firearm in the commission of a felony.
- 1203.073(b)(5)PC - Possess over 14.25 grams of crack for sale.
- 22210 PC - Possession of a billy, blackjack, sandbag, sap or loaded cane.
- 11370.1(a) H&S - Possession of a controlled substance while armed with a firearm.
- 11351.5 H&S - Possession or purchase for sale cocaine base.
- 148.9(a) PC - False identification to police officers.
- 11364.1 H&S - Possession of drug paraphernalia.
- 11377(a) H&S - Possession of a controlled substance.
- 11378 H&S - Possession of a controlled substance for sale.
- 484e(c) PC - Sell, transfer, receive etc. access cards with the intent to defraud.
- 245(a)(1) PC - Assault with a deadly weapon other than a firearm.
- 242 PC - Battery.
- 211 PC - Robbery.
- 417(a)(1) PC - Exhibit a deadly weapon other than a firearm.
- 12022.1 PC - Felony committed while on bail.
- 496(a) PC - Possession of stolen property.
- 30605 PC - Possession of an assault weapon.
- 23900 PC - Tamper with the identification marks on a firearm.
- 273a(b) PC - Willful cruelty to a child causing injury or death.
- 11370.2(a) H&S - Enhancement for prior drug convictions.
- 33210 PC - Possess or sell a short barreled shotgun or rifle.
- 3455 PC - Violation of Post Release Community Supervision. (PRCS – prison realignment from AB 109)
- 21310 PC - Carry a concealed dirk or dagger.

Re: Agenda item #9.a.

(from <http://www.911dispatch.com/info/ntw/>)

National Telecommunicators Week

Each year, the second full week of April is dedicated to the men and women who serve as public safety telecommunicators. It was first conceived by Patricia Anderson of the Contra Costa County (Calif.) Sheriff's Office in 1981 and was observed only at that agency for three years. Members of the Virginia and North Carolina chapters of the Association of Public-Safety Communications Officials (APCO) became involved in the mid-1980s. By the early 1990s, the national APCO organization convinced Congress of the need for a formal proclamation. Rep. Edward J. Markey (D-Mass.) introduced what became H.J. Res. 284 to create "National Public Safety Telecommunicators Week." According to Congressional procedure, it was introduced twice more in 1993 and 1994, and then became permanent, without the need for yearly introduction.

The official name of the week when originally introduced in Congress in 1991 was "National Public Safety Telecommunicators Week." In the intervening years, it has become known by several other names, including "National Public-Safety Telecommunications Week" and "International Public Safety Telecommunicators Week."

Suggested certificate of appreciation language:

In honor of
National Telecommunicator Week
We Hereby Honor

[_____]

For constant devotion to public safety dispatching, consistent excellence in customer service, and the continued pursuit of our goal of protecting life and property, while maintaining the highest level of professionalism.

Proclamation

National Public Safety Telecommunicators Week

April 12-18, 2015

Whereas emergencies can occur at anytime that require police, fire or emergency medical services;

And Whereas when an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property;

And Whereas the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the [INSERT TOWN] police-fire communications center;

And Whereas Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services;

And Whereas Public Safety Telecommunicators are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information and insuring their safety;

And Whereas Public Safety Telecommunicators of the [INSERT AGENCY] have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients;

And Whereas each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year;

Therefore Be It Resolved that the City Council of [INSERT TOWN] declares the week of April 12 through 18, 2015 to be National Public Safety Telecommunicators Week in [INSERT TOWN], in honor of the men and women whose diligence and professionalism keep our city and citizens safe.

Signed this ___ day of _____, 2015
Governor/County Executive/Mayor _____
[INSERT STATE]/[INSERT COUNTY]/[INSERT TOWN]

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, March 23, 2015 12:02 PM
To: Lee, Katherine
Subject: FW: Police Review Commission request from Ferguson Missouri

From: Mark Ahrens [<mailto:exhillboy@yahoo.com>]
Sent: Monday, March 23, 2015 11:55 AM
To: PRC (Police Review Commission)
Subject: Police Review Commission request from Ferguson Missouri

COMMUNICATION No. 4331

Ms. Bernstein, as chair of the PRC, I assume this email will be coming to you.

My name is Jeff Ahrens and I was chosen to serve on our Ferguson Civilian Review Board task force. Our group is writing the proposed ordinance to present to our city council for consideration. We've been working for the last six months as a widely diverse group of residents to try to figure out how best to establish the rules and guidelines for a Civilian Review Board to help bridge between police and citizens.

We've made significant progress but still have a number of topics to address. I've grabbed the assignment of reaching out to a number of somewhat similar sized cities with NACOLE recognized review boards or auditors to capture some good suggestions, particularly about training of board members, lessons learned, maybe even hints that you've found along the way.

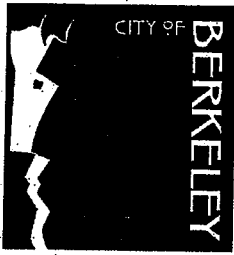
In reviewing the website for your city's Police Review Commission, it appears that Berkeley, as one of the oldest civilian oversight organizations, has established a very similar board to what we in Ferguson are working to establish. I'm going to tailor my questions specifically for that environment. If it is not presumptuous I am assuming that the proper request is to ask you to share this with the other members of your board. Your inputs and recommendations will help us as we wrap up our efforts. Feel free to respond with questions about me, about our task force, even about what's going on in Ferguson today.

My questions for the board – 1) Could you share specifics with respect to the training given/required for board members? 2) Was there a particular issue or incident that was the catalyst for the formation of your office? 3) Do you feel that the public has responded favorably to this board being in existence? 4) Have there been any specific initiatives the police department, city government, or your board have put into place to improve relations between citizens and the police department? 5) Any great thoughts, lessons learned, something else to help us as we move forward?

Thank you in advance for any information or insights you can provide. Thank you as well for serving in the role you are in. Ferguson has much to do to heal wounds and move forward, but I'm encouraged by the progress being made and the spirit of the people to rebuild and be an example to the rest of the country as to how to put the pieces back together in a better way.

Sincerely,

Mark J. (Jeff) Ahrens
723 Chanslor Avenue
Ferguson, MO 63135



Police Review Commission (PRC)

COMMUNICATION No. 4331

March 23, 2015

Berkeley City Council
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: Annual Meetings of Commission Appointees

Dear Honorable Mayor and Members of City Council,

The Police Review Commission (PRC) has considered the Commission on Aging's request to join them in urging you to hold annual commissioners' meetings with their appointees.

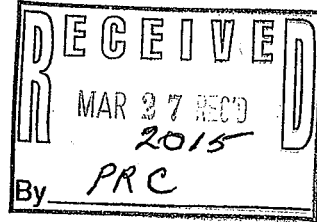
At its March 11, 2015 meeting, the PRC passed a motion to: "Strongly urge that Councilmembers hold annual meetings with their Commissioners, at their discretion." Ayes – Bartlett, Finley, Lippman, Lowhurst, Perezvelez, Rogers, Sherman, and Vicente; Noes – None; Abstain – Bernstein; Absent – Allen.

Sincerely,

George Perezvelez,
Vice-Chair
Police Review Commission

cc: Christine Daniel, City Manager
Gail Feldman, Secretary, Commission on Aging
PRC Commissioners

March 25, 2015



Dear Police Review Commission,

I hope your commission will join the growing chorus of voices who support SB 608 introduced by State Sen. Carol Liu, D-La Cañada Flintridge, the Right to Rest Act.

The current Berkeley City Council majority seems unclear about what the facts show: the criminalization of homelessness is the most expensive and ineffective approach to our national housing crisis. Please help educate them.

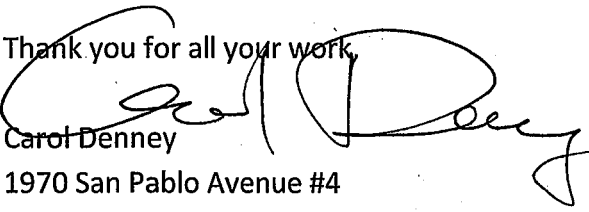
There are two reports, one national and one specific to California's anti-poor laws, which help clarify the facts. Please read them, encourage the City Council to read them and reconsider more anti-homeless laws in Berkeley:

California's New Vagrancy Laws: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2558944

No Safe Place- the Criminalization of Homelessness in U.S. Cities: http://www.nlchp.org/documents/No_Safe_Place

In the meantime, we are badly in need of a tracking system to guard against what many suspect is already taking place: a pattern and practice of discriminatory use of existing laws against poor and homeless people. Please request a tracking system, which was used to stop the discriminatory use of pepper spray against black citizens in Berkeley as mentioned in the following article (see attached).

Thank you for all your work.


Carol Denney
1970 San Pablo Avenue #4
Berkeley, CA 94702
510-548-1512

COMMUNICATION No. 1760

Friday
March 20, 2015

THE BERKELEY DAILY PLANET

FRONT PAGE COLUMNISTS ARTS & EVENTS THE WEEK FULL TEXT

Public Comment

Track Discrimination at its Source

C. Denney

Friday March 20, 2015 - 02:26:00 PM

Ever tried it? Not cigarettes – have you ever tried to get the city’s help with the people who constantly smoke in the smokefree areas? Maybe the smoke is coming in your house, yard, or workplace, and it is affecting your health. Maybe there’s a group that always smokes in your favorite park, so you can’t bring your kids. Maybe the employees at your favorite watering hole or restaurant smoke right out front despite the smokefree commercial districts law, filling up the place with smoke so you can no longer patronize the business. ***Buckle your seat belt if you try.***

Be prepared to wait for hours for an officer to show up if they show up at all. Be prepared to get a boatload of attitude from the officer about how the law you’re trying to get enforced doesn’t exist (“that’ll be the day” is one officer’s direct quote). Be prepared to have to describe the offender’s height, weight, age, race, and clothing in great detail even though by the time the officer shows up (if he or she does) the cigarette is out and the violator is long gone. But the majority of those who violate the law are not homeless.

The majority of the people creating the worst secondhand smoke problem in Berkeley’s smokefree are the customers and employees of businesses in the commercial districts. Take a look outside the Berkeley Rep during a theater intermission. The poorest, odd-looking, possibly homeless people in downtown are by any measure an extreme minority, and if some of those people violate the smoking regulations it’s because customers, students, employees, and passers-by do the same thing as a matter of course without ever being ticketed. But guess who’s getting tickets?

It’s hard to prove that the majority of smoking violation tickets are being issued to poor people and panhandlers, because there is no tracking system for such tickets, something the Berkeley City Council should have asked for when the law was enacted in 2008 and is still badly needed. Secondhand smoke is a serious issue, and the hard-working public health advocates who worked for the ordinance deserve respect. ***But discriminatory use of the law is equally serious.***

When the Berkeley City Council initially allowed the police to use pepper spray (oleoresin capsicum) in Berkeley their permission came with an obligation to track the date, location, age, and race of the person pepper-sprayed as well as the name of the officer using the spray, a system which Editor Grace Underpressure of the Pepper Spray Times used to prove that the overwhelming majority of pepper spray uses were taking place in what she called “the Pepper Spray Triangle” near Sacramento and Alcatraz in south Berkeley, an historically black neighborhood. The majority of



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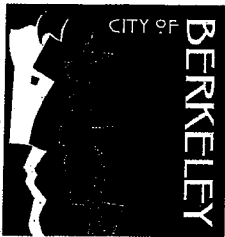
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people being sprayed were black, and the embarrassing racial and geographical imbalance of pepper spray's use led to more critical press coverage from Paul Rauber's "Sticks and Stones" column in the East Bay Express and at least temporary changes in police policy.

But the tracking system seems to have disappeared, nor is there any tracking system being proposed for the new anti-poor, anti-blanket laws being shaped without the benefit of commission or community input at City Hall.

Demand community involvement. Once even current anti-poor laws are tracked, the discrimination so obvious to people who dedicate themselves to observing the discriminatory practices of the police can more easily prove what all of us, including downtown businesses and the city council, should agree is unfair.



COMMUNICATION No. 4331

March 31, 2015

Dean Sujit Choudhry
University of California, Berkeley
School of Law
215 Boalt Hall
Berkeley, CA 94720-7200

Dear Dean Choudhry:

On behalf of the members of the Berkeley Police Review Commission, thank you for allowing the PRC to use Booth Auditorium for its town hall and regular meeting on February 25, 2015. The PRC was pleased to be able to bring its meetings to the University of California campus and thereby advance its goal of making more community members aware of its work as a civilian oversight agency. It was valuable, too, for the Commissioners to hear from the U.C. community.

Thanks are also in order to those in your office who attended to all the details of signage, room set-up, and the audio system. In particular, I want to recognize Fredda Olivares for her able assistance.

Sincerely,

A handwritten signature in black ink that reads "Katherine J. Lee". The signature is written in a cursive, flowing style.

Katherine J. Lee
Police Review Commission Officer

cc: Police Review Commissioners

