



Police Review Commission (PRC)

POLICE REVIEW COMMISSION REGULAR MEETING AGENDA

October 14, 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. CHIEF OF POLICE'S REPORT

Budget, staffing, training updates, and other items.

5. OLD BUSINESS (discussion and action)

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

i) Discuss "Introduction" section of investigative report.

ii) Discuss "Discussion" section.

iii) Discuss any remaining aspects of report.

b. Consider the Mutual Aid Subcommittee's recommendation that the PRC urge the Council to end participation in the Urban Shield exercise funded under the Urban Area Security Initiative (UASI) program.

c. Whether to initiate a policy review based on the policy complaint filed by Stephen Pitcher, and what steps should be taken.

6. CHAIR'S REPORT

7. PRC OFFICER'S REPORT

Status of complaints; announcements.

8. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

9. 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.)

10. 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 SPECIAL MEETING
October 14, 2015**

MINUTES *(none)*

COMMUNICATIONS

Communications #4331 – Draft introduction to PRC’s investigative report, by Commissioner Bernstein. Page 5

Communications #4331 – Draft paragraph for introduction to PRC’s investigative report, by Commissioner Roberts. Page 9

Communications #4331 – Staff draft of discussion section. Page 11

DECLARATION FOR THE EFFECTIVE PERIOD

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2
3 2. Introduction

4
5 Beginning on December 6, 2014, the City of Berkeley experienced several days of
6 protests sparked mainly by the deaths of black men at the hands of police officers in
7 Ferguson, MO and Staten Island, NY. The first night of protests drew the largest crowds;
8 unfortunately, the peaceful resolve of the vast majority of demonstrators was undermined
9 by individuals intent on committing violent acts against people and property. ~~But t~~The
10 response of the Berkeley Police Department to these incidents, even by its own
11 assessment, fell short of community expectations. The days and weeks that followed were
12 marked by public outcry over perceived excessive use of force and infringement on First
13 Amendment rights at the hands of police. The City Council and the Police Review
14 Commission heard from scores of members of the public who witnessed or were victims
15 of police action on December 6.

16 One of the several actions the Council took in response was, at its February 10, 2015
17 meeting, to ask the PRC to conduct an investigation:

18 *Refer to the Police Review Commission to initiate an investigation into the police*
19 *response to protests on December 6, 2014; the appropriateness of using tear gas,*
20 *and other non-lethal munitions, and baton strikes to disperse the crowd; and make*
21 *recommendations based on what was learned from the incident and what could be*
22 *improved upon for revised policies and procedures on crowd control, the use of*
23 *force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as*
24 *well as policies on mutual aid in First Amendment activity and crowd control*
25 *incidents. . . .*

26 *The Council also refers the attached questions to the Police Review Commission*
27 *to consider in conducting their investigation.¹*

28 In conducting its investigation, the PRC listened to firsthand accounts of protestors'
29 experiences at several of its meetings. On February 25, the PRC held a special meeting
30 on the University of California campus to facilitate the ability of students – who comprised
31 a large portions of the demonstrators – to speak about what they saw and experienced.
32 Several Commissioners drew on their own experience, having themselves participated in
33 the December 6 protests. Some Commissioners and staff attended the City Council's
34 January 17 Worksession on Improving Police and Community Relations. Staff compiled

¹ See Appendix 1.

1 written summaries of public comment from that Worksession and other City Council
2 meetings at which the December 6 protests were discussed for the PRC.

3 The PRC's investigation included review of dozens of documents the BPD supplied,
4 along with some 400 video clips of the December 6 events taken by BPD, protesters,
5 media, and other civilian observers. Collectively, the Commissioners viewed each one of
6 those clips.

7 The Commission studied the BPD's applicable policies, including General Orders C-64
8 (Crowd Management and Control), U-2 (Use of Force), and M-2 (Mutual Aid and
9 Agreements with Law Enforcement Agencies). It also reviewed the parallel policies of the
10 Oakland and San Francisco police departments, as well as state law governing mutual
11 aid.

12 On June 9, the BPD issued its report, "Response to Civil Unrest December 6th and 7th,
13 2014: A Review of the Berkeley Police Department's Actions and Events of December 6
14 and 7, 2014," which the Commission reviewed extensively. Police Chief Michael Meehan
15 and the BPD Post-Incident Review Team presented the report to the PRC at its June 10
16 meeting, and then answered questions from the Commission. The Chief and/or review
17 team members attended all subsequent PRC meetings, regular and special, to answer
18 additional questions and provide clarifying information as the Commission continued its
19 work.

20 The Commission appreciates the BPD's candor in spelling out in its report that the
21 strategies used on December 6 did not achieve the desired outcome, and in identifying
22 numerous areas for improvement. It is pleased to see the BPD reaffirm its commitment to
23 protecting free speech and facilitating protests regardless of the message being
24 expressed.

25 The PRC's independent investigation and review of the events of December 6 does
26 diverge in many respects from that of the BPD. In particular, the ~~At the same time, the~~
27 ~~PRC's views of what happened and how the BPD can improve future such responses~~
28 ~~diverge in some respects. The PRC~~ questioned the accuracy of the BPD's
29 characterization of who organized the protests ~~and why~~ and the primary focus of the
30 protests. The PRC also believes that it is important to provide not only a narrative of the
31 events that transpired, but whenever possible, to identify the source for our conclusions, in
32 order to allow the community to be as informed as possible, so the Commission
33 produced its own findings of the events of December 6 (Section [3]).
34

1 Section [3] of our report presents our Findings regarding the events of December 6,
2 2014. Following the Findings, the PRC offers its analysis of those events in the Discussion
3 section (Section [4]). Next, in the Recommendations section (Section [5]), the PRC
4 assesses each of the 32 recommendations the BPD made in its report. The Commission
5 agrees with some of the recommendations, offers alternatives to most others, and
6 suggests [a few] recommendations of its own.

7 The Council asked the Commission to report its recommendations to the City
8 Manager, Chief of Police and City Council by August 10. Due to the significance of the
9 Council's charge, the PRC decided to handle its investigation as a full Commission,
10 without establishing a subcommittee (other than a steering subcommittee to help organize
11 the Commission's work at the start.) The Commission worked diligently. Nonetheless, the
12 PRC needed an additional 2-1/2 months to complete its work, due to the scope of the
13 events and the policy issues raised. From the time of the Council's February referral until
14 the final approval of this report, the PRC held ten special meetings to devote more time to
15 the investigation, in addition to its 14 regular meetings, while clearing its agendas of all
16 else but the most pressing matters. It took time to get a good picture of what unfolded
17 over several hours, in protests that moved from the campus area to the I-80 freeway and
18 back, and that involved crowds of up to 600 people. The police policies implicated – chief
19 among them those regarding crowd control and crowd management, use of force, and
20 mutual aid – ~~are some of the most~~present challenging and complex issues ~~to tackle~~.

21 In a separate action in February, the City Council asked the PRC to review all BPD
22 policies and orders and make recommendations for revisions that it deems appropriate. In
23 the course of this investigation, the PRC reviewed many applicable policies of the BPD
24 and other agencies, and made numerous general recommendations about policy, which
25 are described in this report. Thus, much of the groundwork has been laid for developing
26 specific revisions to the BPD's policies. The PRC looks forward to working with the BPD
27 on these important next steps.

1 The first step in the investigation is to identify the problem. This is done by talking to the people who are involved in the problem and trying to understand what is going on. It is important to get a clear picture of the problem before trying to solve it.

2 The next step is to gather information. This can be done in a number of ways, such as talking to the people involved, looking at documents, or conducting experiments. It is important to gather as much information as possible before trying to solve the problem.

3 The third step is to analyze the information. This is done by looking for patterns and relationships in the information. It is important to look for both obvious and hidden patterns. This step is often the most difficult, but it is also the most important.

4 The fourth step is to develop a solution. This is done by coming up with a plan that will solve the problem. It is important to think about all the possible solutions and to choose the one that is most likely to work. It is also important to think about the resources that will be needed to implement the solution.

5 The fifth step is to implement the solution. This is done by putting the plan into action. It is important to monitor the progress of the solution and to make adjustments as needed. It is also important to communicate with the people involved in the problem throughout the process.

6 The sixth step is to evaluate the solution. This is done by looking at the results of the solution and comparing them to the original problem. It is important to see if the solution has solved the problem and if it has done so in a way that is acceptable. It is also important to think about what has been learned from the process and how it can be used to solve other problems.

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To: PRC
From: Terry Roberts
* Re: Narrative for Dec 6, 7 report
Date: Oct. 8, 2015

* PRC Officer's note: At the Oct. 8 meeting, Commissioner Roberts clarified that this is for the Introduction.

I recommend that the following or similar wording be placed in the PRC's officers draft introduction after line 30, and that the details of my memo to you dated September 7, 2015 be covered elsewhere in the body of the report.

After line 30:

In addition, it is clear that in the big picture BPD was unprepared to adequately respond to a protest and civil unrest of this nature. The PRC feels that many of the recommendations now being made by BPD should have been addressed much sooner in the normal course of its line of duty. We live in a sophisticated and diverse urban environment. Street protests and social unrest can be experienced at any time. In preparation for such events we would expect BPD to anticipate and plan for key factors such as adequate equipment, training, field procedures, mission clarity, and communications, and to demonstrate best practices in policing policies. To ensure that this occurs in the future, the PRC feels that a follow up report from BPD is necessary in this regard to assure the community of BPD's "readiness to respond" in these situations. More details on this matter are shown in section__ of this report.

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1. The first part of the report is devoted to a description of the experimental conditions and the results obtained. The second part is devoted to a discussion of the results and their significance.

2. The results of the experiment are shown in Figure 1. The data show a clear trend of increasing activity with increasing temperature. This is consistent with the expected behavior of the system.

3. The data in Figure 1 are fitted to the Arrhenius equation, and the activation energy is found to be 12.5 kJ/mol. This value is in good agreement with the literature value of 13.0 kJ/mol.

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Discussion section

A. Very preliminary and free-form thinking about what this might look like

What conclusions are to be drawn from the Findings in the prior section? How do these conclusions inform the Recommendations of the next section?

1) In general, here's what was problematic

- i) Focusing, in beginning, on crowd control, when should've been on crowd management

2) Specific areas of concern

- i) Crowd management/control
 - (a) Kettling and dispersal tactics
 - (b) Communications
- ii) CS gas use
- iii) Other less-lethal munitions used
- iv) Baton strikes
- v) Mutual Aid
- vi) Media

3) Accountability

- i) No AAR done

1 B. Ideas about what some parts of the Discussion section might look like.

2
3 Crowd Control: Overall Approach

- 4
- 5 1. The BPD's approach on December 6, 2014, focused too heavily from the start on
6 crowd control, when the emphasis should have been on crowd management. The
7 crowd control posture resulted from an assumption that the protesters were largely
8 motivated by those promoting an "FTP" event and associated with violent action. To
9 the contrary, while focus of the protests was on the actions of police across the
10 country, the vast majority of protesters intended to march peacefully. The PRC agrees
11 with the BPD's post-incident assessment about how to approach such events in the
12 future. "We recommend greater resources be deployed in crowd *management* and
13 preventative roles. If necessary, resources should be redeployed or reconfigured for
14 crowd *control* needs as they arise. Greater emphasis should be placed on crowd
15 *management* techniques starting at the beginning of the event."¹ (staff)
- 16
- 17 2. The City considers non-violent demonstrations of concern about community issues to
18 be positive and healthy activities. Therefore, the City should interact with such
19 demonstrations primarily as events to be facilitated, rather than as threats to public
20 safety. (From Recommendation #8) Police officers will seek to navigate complex and
21 confusing crowd situations which may have mixed elements of legal and illegal,
22 peaceful and violent behavior. Facilitation of free expression, de-escalation of tension,
23 and peaceful resolution of conflict are primary goals of police interaction with crowds.
24 (New Rec. – preamble to Communication section)
- 25
- 26 3. To advance and make meaningful its goal of protecting First Amendment rights of
27 freedom of speech and assembly,² police must win the trust of the assembly that they
28 can demonstrate in safety. Heavily armed, massed police using crowd control tactics
29 may inflame an assembly and incite rather than prevent violent clashes. They can
30 intimidate peaceful demonstrators and promote alienation and confrontation. [cite to
31 study if available now.] Retired San Francisco police chief Tony Ribera "said law
32 enforcement agencies are usually most successful at handling demonstrations when
33

34 ¹ BPD Report, p. 49, para. 3.

² BPD General Order C-64, para. 22.

1 they approach with a non-confrontational stance and ramp up when necessary. 'It's
2 hard to have a confrontational situation, then pull back from that.'³ The need for
3 sufficient police resources must also be balanced against the chilling effect of a large
4 and visible police presence.⁴ (From Rec. #8, edited.)

5
6 Crowd control: communications [omitted from Findings – didn't seem to fit there]

7
8 4. BPD did not adequately test the East Bay Regional Communication System (EBRCS)
9 for use in large-scale multijurisdictional actions. EBRCS is designed to have specific
10 radio channels to be used for multi-agency actions.⁵ However, some of agencies lines
11 were encrypted and others were not. The failure of EBRCS meant that BPD was not
12 able to communicate with the mutual aid responders. (AB, GP)

13
14 5. BPD also failed to either record or maintain any of the radio communication from
15 December 6 between BPD itself. The loss of this contemporaneous recording of the
16 department's observations and actions has had a significant impact on the ability to
17 both reconstruct and test the recollections of those involved. (AB, GP)

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33 ³ See: <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. (Aug. 22, 2014.)

34 ⁴ OPD Crowd Control policy, Sec. III.C.2, p. 4.

⁵ BPD Report, page 46, paragraph 4.

1 Less-lethal munitions - accounting

2
3 6. BPD staff told the PRC that they were unable to report how much CS gas or other
4 less-lethal munitions they or mutual aid responders used. However, it can be
5 discerned from other BPD materials that a significant amount of less-lethal ordnance
6 was expended on December 6. A December 7 BPD email states that "Last night's
7 rioting consumed the vast majority" of their on-hand supply of CS gas and 40 mm less
8 lethal ammo, and requests that departments supply "as much as you are willing to
9 loan us"⁶ The Hayward police reported that a count of their specialty impact munitions
10 and chemical agents revealed a need to restock inventory.⁷ (GL) One Alameda
11 police officer reported shooting 10 muzzle blasts of CS gas and throwing one CS
12 canister, while another deployed five CS canisters; six other officers deployed one CS
13 canister each.⁸ The inability of the BPD to account for how much CS gas and other
14 less-lethal munitions were used is troubling. While the PRC agrees with the BPD that
15 accountability for the deployment and use of less-lethal munitions should be improved,
16 the PRC would also like to see an accounting by mutual aid responders. (staff)

17
18 CS Gas

19
20 7. The PRC believes that CS gas was launched indiscriminately and broadly on two
21 occasions the night of December 6, 2014. (GL) This use of CS gas is a cause of major
22 concern. (rec #22) Not only is it unclear whether the actions of the crowd warranted
23 such use, it is unclear how decisions were made to continue to deploy CS gas, and
24 whether the continued use was necessary. (#22) CS gas was deployed with
25 apparent disregard for non-violent protestors, bystanders, children, the elderly and
26 disabled, and the homes of neighboring communities,⁹ and its use lacked basic
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29

30 ⁶ December 7, 2014 email from Lt. Frankel to undisclosed recipients.

31 ⁷ Hayward Police Department Special Response Unit, After Action Report – SRU
Operation # 14-14, page 7.

32 ⁸ Alameda Police Report, various references.

33 ⁹ Anonymous/Transgender person, PRC Meeting, December 10, 2014 (This Berkeley
34 resident resides near Telegraph and Peoples Park and told the PRC that tear gas went
into the apartment via open windows and caused food, dishes, and linens to be thrown
out.).

1 protections such as using the minimum amount necessary and ensuring medical care
2 is available for those exposed to the gas. (GL)

3
4 8. Berkeley is out of step with its neighbors on the use of CS gas. The San Francisco
5 Police Dept. does not use tear gas.¹⁰ According to the Oakland Crowd Control and
6 Crowd Management Policy, "Chemical agents can produce serious injuries or even
7 death," and officers are to "use the minimum amount of chemical agent needed to
8 obtain compliance."¹¹ Further, "The use of hand-thrown chemical agents or
9 pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or
10 serious bodily injury from shrapnel. Said devices shall be deployed to explode at a
11 safe distance from the crowd . . ." ¹² Berkeley's crowd control and use of force policies
12 contain no similar language. (GL)

13
14 9. The PRC considered whether to recommend a ban on the use of CS gas for crowd
15 control purposes, but a majority of Commissioners do not support such a ban. Most
16 felt that the BPD should be able to resort to CS gas if needed. All Commissioners feel
17 strongly, however, that if CS gas is allowed, policies be revised to limit its use to
18 narrowly prescribed circumstances. Moreover, the Commissioners were unanimous in
19 their opinion that if CS gas is to be deployed to disperse a crowd, then its possible use
20 should be made explicitly clear in a dispersal order, and medical aid should be
21 arranged for in advance of deployment. (staff)

22 23 Less-Lethal Munitions

24
25 10. BPD told the PRC indicating that they were unable to report on how much less-lethal
26 munition the department expended. We do know that officers fired one less-lethal
27 foam baton round shortly after 6:30 pm on MLK Jr. Way near Addison Street. Another
28 report around 11:15 pm states "Fred's Market, man shot w/ projectile BFD loaded w/
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31 ¹⁰ <http://www.sfgate.com/bayarea/article/Police-often-provoke-protest-violence-UC-5704918.php>. Also, Capt. Theresa Gracie told the PRC Officer in a May 13, 2015 phone
32 conversation that SFPD has not used tear gas in the 20 years she has been with the
33 department.

34 ¹¹ Oakland PD Crowd Control Policy, Sec. V.H.4.b. and V.H.4.c.

¹² Oakland PD Crowd Control Policy, Sec. V.H.5.b.

1 rig.” The subject was transported to Alta Bates.¹³ (GL) Hayward police reported a
2 need to restock their specialty impact munitions, but did not specify how much was
3 used.¹⁴ (staff) No other information has been made available regarding the use of less-
4 lethal munitions. (GL)

5
6 11. Under Oakland policy, less-lethal munitions “shall not be used for crowd management,
7 crowd control or crowd dispersal during demonstrations or crowd events,”¹⁵ and they
8 “shall be used only when other means of arrest are unsafe and when the individual
9 can be targeted without endangering other crowd members or bystanders.”¹⁶ Berkeley
10 has no such restrictions. (GL) Berkeley’s Use of Force policy allows use of less-lethal
11 munitions in a crowd situation, but only by authorization of the Police Chief or his/her
12 designee, except in exigent circumstances.¹⁷ In such cases, the Incident Commander
13 must authorize the use.¹⁸ (staff)

14
15 12. BPD staff stated that they could not guarantee that non-violent people will not be shot
16 accidentally. Nor could they guarantee that people would not be shot in protected
17 organs. (GL) Therefore, PRC is recommending a revision of BPD’s policy on using
18 less-lethal munitions, to minimize the risk that innocent persons will be hit. (staff)

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30 _____
31 ¹³ Cites needed. CAD Report? Baton round mentioned in BPD report, p. 21 without a
time given.

32 ¹⁴ Hayward Police Dept. Special Response Unit After Action Report – SRU Operation
#14-14.

33 ¹⁵ OPD Crowd Control Policy, Sec. VI.F.2.

34 ¹⁶ OPD Crowd Control Policy

¹⁷ General Order U-2, paragraph 18.

¹⁸ General Order U-2, paragraph 15.