

CITY OF BERKELEY



POLICE REVIEW COMMISSION STATISTICAL REPORT 2008

CITY OF BERKELEY POLICE REVIEW COMMISSION 2008

COMMISSIONERS

William White, Chair
Sharon Anne Kidd, Vice-Chair

Russell Bloom
Kamau Edwards
Vonnie Gurgin
Jonathan Huang
George Perezvelez (2009 Vice Chair)
Michael Sherman
Sherry Smith (2009 Chair)

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Tom Bates

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Darryl Moore (District 2)
Maxwell Anderson (District 3)
Dona Spring (District 4)
Laurie Capitelli (District 5)
Betty Olds (District 6)
Kriss Worthington (District 7)
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FOREWORD

We are pleased to present another annual report of the Police Review Commission to the community of Berkeley. As always, our staff has worked hard to compile statistical data that reflects the activities of complaints received by the PRC.

Unfortunately for all concerned, recent years have been fraught with transition and setback in the civilian oversight process, due to sweeping decisions of the California Courts. An individual can no longer bring a complaint against a police officer and follow that complaint through to an open public hearing. The Courts have ruled that these complaints are personnel records and California statutory law prohibits police officers' records from being disclosed to the public. So after years of open Boards of Inquiry in Berkeley, the open hearing process is abolished.

California is the only state in the nation that seems to have taken a step backwards, preventing citizen participation in a transparent process of police conduct investigation. The State Legislature has made a trivial effort to preserve the oversight process, but police union pressures have thus far nullified this effort.

We as citizens of Berkeley know that we have an outstanding police department, but we also know that the civilian oversight process is an important factor in assuring this performance. This oversight came into existence through a Berkeley voter initiative more than 30 years ago. This means that you, the Berkeley citizenry, have long supported civilian oversight. I therefore challenge each of you to make an individual effort to save the process and get involved once again in supporting legislative efforts to restore effective civilian oversight in California.

On behalf of my fellow Commissioners, I want to express our appreciation for excellent staff work as every effort is made to try to assure complainants that their problems with police personnel are being paid heed, and that improved police policies and behavior will result despite a process that compels inquiries to be confidential.

Sherry Smith
Chair
Police Review Commission



Police Review Commission

September 4, 2009

Phil Kamlarz
City Manager
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Kamlarz:

Pursuant to Ordinance No. 4644-N.S., I am pleased to present to you the Police Review Commission (PRC) Statistical Report of 2008.

The nine-member volunteer Commission worked especially hard in 2008 reviewing eighty-six cases, conducting hearings and meeting with the public and the police department to review policies and develop police policy recommendations. The Commission's dedication to the Berkeley community in providing objective police oversight is truly inspiring.

I would like to thank the PRC staff: Barbara Mann, Maritza Martinez and Rebecca Webb for their commitment and dedication to running the daily operations of the PRC and assisting in completing this report.

I would like to thank the City Attorney's Office for their efforts in defending the PRC's hearing process during the Court of Appeal hearing.

I would like to thank the Berkeley Police Department for their continued cooperation in the PRC investigations, especially to Chief Douglas Hambleton, who will be retiring, for his guidance to the Commission on police policies. He has attended the majority of Commission meetings and has shown patience, humble leadership, and a steadfast commitment to public safety.

Respectfully submitted,

Victoria A. Urbi
Police Review Commission Officer



2008 PRC STATISTICAL REPORT

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I. EXECUTIVE SUMMARY

COMPLAINTS: In 2008, the Police Review Commission (PRC) received 42 new complaints.

The PRC received 141 allegations. The majority of the allegations were regarding improper arrest, search, stop or detention and discourtesy.

The Commission resolved 86 complaints. Out of the 86 complaints, 13 were filed in 2008. 75 complaints were carried over from 2007, because of pending litigation, where cases could not be closed or heard from September 2006 to November 2007.

COMPLAINANTS: The majority of the complainants were African Americans with a total of 28 complainants or 67% of the total complainants. African American men made up the majority of the complainants with 15 complaints followed by African American women with 13 complaints.

The majority of complainants were between the ages of 45-54 with 15 complainants, followed by 8 complainants between the ages of 25-34.

INVESTIGATION TIME: The average time to investigate a complaint took 4 months and the average time to close a case was 7 months. PRC staff interviewed a total of 97 police officers and witnesses.

BOARDS OF INQUIRY: The Commission held 7 boards of inquiry and sustained 9 allegations. After a board of inquiry hearing, subject officers may appeal the sustained findings to an administrative law judge. In 2008, PRC had one Caloca appeal hearing. The administrative law judge affirmed the PRC's findings.

PUBLIC HEARINGS: PRC held two public hearings on the officer-involved shooting of Anita Gay and crowd control issues at the Marine Recruitment Center.

POLICY SUBCOMMITTEES: The Evidence Theft Subcommittee reviewed an incident involving theft of narcotics from the property room and theft of assets seized. The subcommittee made 28 recommendations to City Council and the Police Department accepted 25 out of the 28 recommendations. To view the full report, go to <http://www.ci.berkeley.ca.us/prc> and click on Evidence Theft Subcommittee.

For more policy subcommittees, see page 11.

MEETINGS: The PRC held 52 Commission-related meeting, policy subcommittee meetings or activities, which is an average of 4.3 meetings per month.

POLICE DEPARTMENT TRAINING: PRC staff conducted its first ever training of all sworn police officers. The training included how PRC conducts investigations, the Commission's work and what to expect during investigative interviews.

COMMISSIONER TRAINING: Commissioners received training on PRC's history, maintaining objectivity, hearing procedures, officer-involved shootings and the police department.

LEGAL MATTERS: On October 7, 2008, the California Court of Appeal upheld the Alameda County Superior Court's decision to close PRC hearings to the public and rendered all investigative records confidential. Consequently, officer identities related to complaints are now confidential. The PRC was also ordered to comply with Government Code §3304 or the Peace Officer's Procedural Bill of Rights, which states that investigation of peace officers that may lead to discipline must be completed within one year. Prior to 2007, the PRC was not subject to the one-year expiration period.



II. INTRODUCTION

The Berkeley Police Review Commission is one of the oldest civilian oversight agencies in the United States and serves as a model for police oversight agencies throughout the country. In 1973, the citizens of Berkeley voted to establish the Police Review Commission (PRC) by Ordinance No. 4644. The PRC was given authority to investigate complaints of misconduct filed against the Berkeley Police Department. The PRC also provides citizen participation in the formulation and review of police practices, policies, and procedures.

In the wake of recent officer-involved shootings in the Bay Area, civilian oversight of police has increasingly become more relevant to the public. Although Berkeley had one officer-involved shooting in 2008 (the last officer-involved shooting occurred in 2003), the PRC continues to strive to conduct neutral, fair and objective investigations of the police department when these incidents occur. The Commission has the important role of listening and working with the community on police issues, but it must also maintain impartiality in order to have credibility in solving police-community relations.

In 2008, Berkeley's PRC was the only civilian agency overseeing police in California that defended the City's civilian review of police procedures in maintaining open hearings in a California Court of Appeal case. Although the court ruled that Berkeley must keep its hearings closed to the public, the court ruled that PRC boards of inquiry are confidential personnel records and could be used by the City Manager for personnel-related decisions.

California police oversight agencies lost government transparency in conducting open police misconduct hearings. However, Berkeley continues to have civilian commissioners review and investigate complaints against police and conduct closed hearings. Thus, the commissioners, as representatives of the community, continue to participate in setting and reviewing police practices and policies.

Throughout California, the United States and around the world, independent civilian oversight of police is growing at a fast pace as an alternative to police policing themselves. The Berkeley PRC has assisted emerging agencies in Riverside, Sonoma, Jamaica and more. Additionally, the City of Fresno has recently created an independent police auditor position to independently review police complaints. Most notably, PRC worked with the Bay Area Rapid Transit (BART) in taking steps to start a civilian oversight unit to investigate complaints related to BART police.

Public trust of police is essential in times of critical incidents, and events that occur in neighboring cities impact the Berkeley community. While public resources dwindle and budget priorities shift, civilian oversight of police remains a critical tool for a citizen complaint to be fully investigated and to maintain the highest professional standards in public safety. The Berkeley PRC is excited in its role as a leader in police oversight, while upholding the values of community engagement, participation and public trust.



III. MISSION STATEMENT

The Police Review Commission’s mission is to provide for prompt, fair and impartial investigation of citizen complaints alleging police officer misconduct. Additionally, the PRC is charged with providing a forum for community input in reviewing and evaluating the Berkeley Police Department’s policies, practices and procedures.

IV. COMMISSIONERS

The Commissioners are nine volunteers appointed by the Mayor and members of the Berkeley City Council. As representatives of the Berkeley community, Commissioners are charged with advising the City Council and City Manager on police practices and investigative findings. The City Council relies on the Commissioners to increase the variety of viewpoints raised by police issues. Commissioners expand their expertise on police issues and conduct detailed analyses by reviewing investigation reports and serving on policy subcommittees.



From Left to Right – Top: Commissioner William White, Commissioner Michael Sherman, Vice Chairperson George Perezvelez, Commissioner Jonathan Huang. Bottom Row: PRC Officer Victoria Urbi, Commissioner Vonnie Gurgin, Chairperson Sherry Smith, Commissioner Sharon Kidd. Not Pictured: Commissioner Kamau Edwards (photo on page 17) and Commissioner Russell Bloom (photo on page16)



Chairperson Jeanne (Sherry) Hicks Smith

Appointed by Councilmember Capitelli, Commissioner Smith has served on the PRC since December 10, 2004. She served as a former legislative aide to Berkeley Councilmember Miriam Hawley, former President of the League of Women Voters and is an attorney in private practice working with nonprofits and civic groups. Chair Smith served on the Evidence Theft subcommittee and currently serves on the Officer-Involved Shooting subcommittee.

Vice Chairperson George David Perezvelez

Appointed by Mayor Bates, Commissioner Perezvelez has served on the PRC since October 10, 2007. Commissioner Perezvelez is a Restaurant Operations General Manager in the city of San Francisco and a former Naval Officer. As a former member of Act-up and active member in Project Open Hand, his involvement in the GLBT community is paramount. He serves on the PRC Regulations Review Subcommittee and Officer-Involved Shooting Subcommittee.

Commissioner Russell G. Bloom

Appointed by Councilmember Maio, Commissioner Bloom has served since December 1, 2008. Commissioner Bloom is an investigator for a private law firm specializing in asbestos litigation. He is an Executive Vice President of the National Lawyers Guild. He currently serves on the Regulations Review Subcommittee.

Commissioner Kamau Edwards

Appointed by Councilmember Anderson, Commissioner Edwards has served on the PRC since July 26, 2006. Commissioner Edwards is an attorney for the Department of Transportation and serves on the Officer-Involved Shooting Subcommittee and the Improper Search of Homes Subcommittee.

Commissioner Vonnie Gurgin

Appointed by Councilmember Wengraf, Commissioner Gurgin is the newest member of the PRC and has served since December 18, 2008. Commissioner Gurgin is retired. She is a former professor of Criminology at U.C. Berkeley as well as having more than forty years of research experience in fields ranging from criminal justice to cancer epidemiology. She currently serves on the Improper Search of Homes Subcommittee.

Commissioner Jonathan Huang

Appointed by Councilmember Worthington, Commissioner Huang has served on the PRC since February 7, 2007. He is the Commission's student representative and is a full-time student at U.C. Berkeley. Commissioner Huang served on the Criminal Intelligence Subcommittee and currently serves on the Improper Search of Homes Subcommittee.

Commissioner Sharon Anne Kidd

Appointed by Councilmember Moore, Commissioner Kidd has served on the PRC since January 5, 2005. Comm. Kidd works for the Social Security Administration as a Debt Manager Specialist. She is the President of the African American Advisory Committee on Crime for the City of Oakland and works as a Youth Intervention Specialist with the Oakland Police Department. Commissioner Kidd was the Commission Chairperson in 2007, served on the Evidence Theft Subcommittee, Crowd Control Subcommittee and currently serves on the Regulations Review Subcommittee.

Commissioner Michael Sherman

Appointed by Councilmember Jesse Arreguin, Commissioner Sherman has served on the PRC since July 30, 2001. He is also a member of the Peace and Justice Commission. Commissioner



Sherman was a grade school teacher and is currently retired. He served on the Criminal Intelligence Subcommittee, Crowd Control Subcommittee and the Regulations Review Subcommittee.

Commissioner William White

Appointed by Councilmember Wozniak, Commissioner White has served on the PRC since August 6, 1997. As the longest standing Commissioner, Commissioner White has served three terms as the PRC Chairperson, has worked with several PRC Officers and Berkeley Police Chiefs, served on the Evidence Theft Subcommittee, Criminal Intelligence Subcommittee and currently serves on the Improper Search of Homes Subcommittee. Prior to serving the PRC, he served on the Cable TV and Personnel Commissions for the City of Berkeley. Commissioner White is an accountant for the Mills College Alumni Association.

V. STAFF

The PRC has four full-time staff and two student interns. The PRC Officer reports to the City Manager and serves as secretary to the commission. The PRC Officer represents the City Manager and assists the commission in its functions and advises the commission of staff's recommendations.



Left to right: Rebecca Webb, Maritza Martinez, Barbara Mann. Top: Victoria Urbi.

<p>PRC Staff</p> <p>Victoria Urbi, PRC Officer Barbara Mann, Investigator Maritza Martinez, Office Specialist III Rebecca Webb, Office Specialist II</p> <p>U.C. Berkeley Interns</p> <p>Vanessa Dougherty, Nancy Perez (2009)</p> <p>Drei Munar, Gilberto Vera (2007-08)</p>

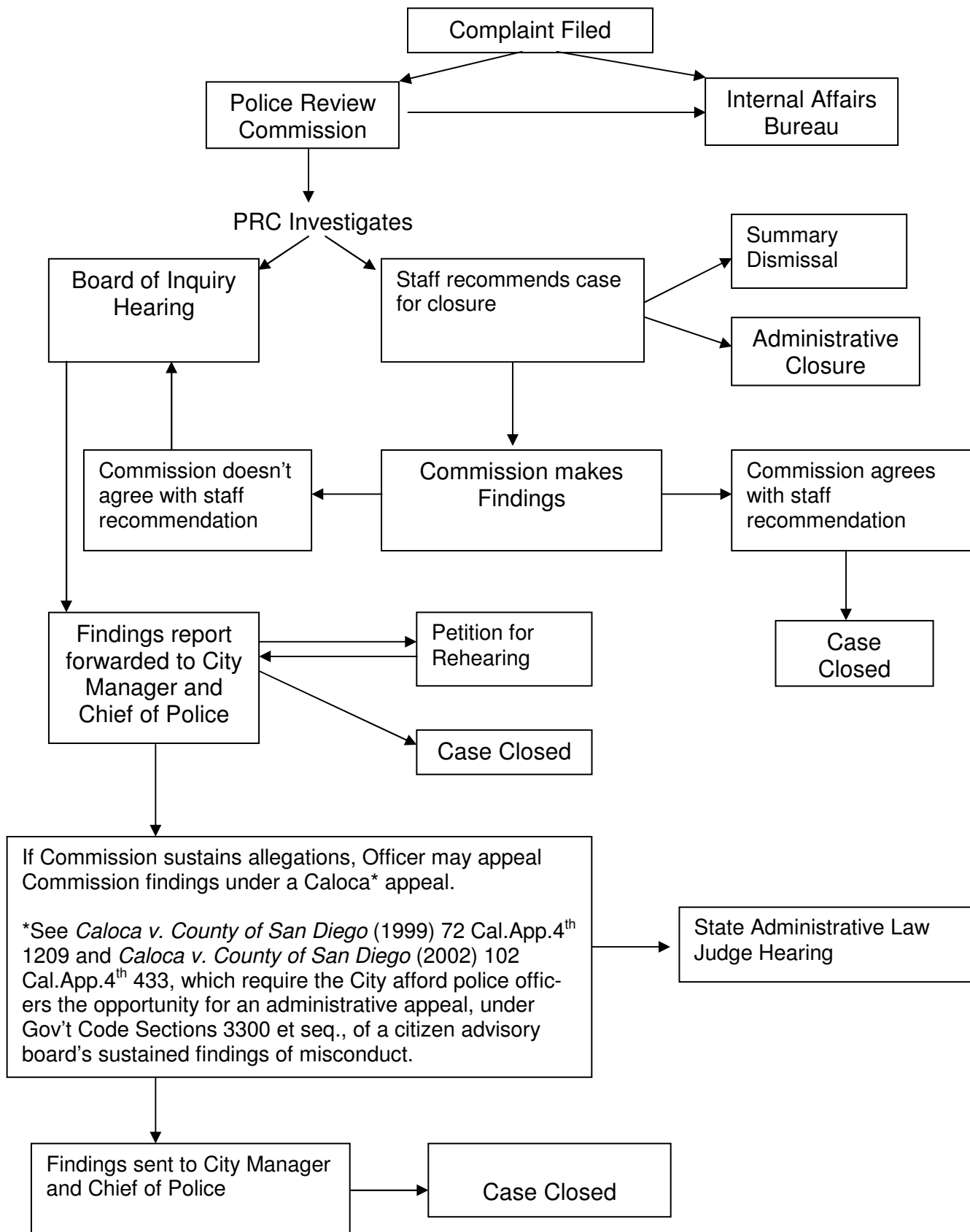


VI. OVERVIEW

Police Review Commission	An independent civilian oversight agency that investigates and hears complaints concerning Berkeley Police.
Mission	<ul style="list-style-type: none"> • Increase public confidence in the police • Improve police training and policies • Increase professionalism among police officers • Increase public confidence in complaint investigations • Conduct fair, objective and neutral investigations.
Types of Complaints	Complaints vary from: discourtesy, excessive force, improper search, improper police procedures, abuse of discretion, and more.
Commissioners	9 Commissioners appointed by the City Council and the Mayor. Commissioners are volunteer members of the community and may receive stipends.
Staff	<ul style="list-style-type: none"> • Staff reports to the City Manager. • 4 full-time employees, 2 student interns. • External to the police department.
Function	<ul style="list-style-type: none"> • Conducts independent investigations of complaints/allegations of police misconduct. • Conducts closed administrative hearings. • Forwards recommended findings to City Manager and Chief of Police. • Makes policy recommendations on police practices and procedures.
Authority for oversight	Berkeley Municipal Code Ordinance No. 4644-N.S. <ul style="list-style-type: none"> • Establishing a Police Review Commission, adopted by voter initiative on April 17, 1973
Police Department	<ul style="list-style-type: none"> • 186 sworn police officers
Commission Meetings	Commissioners meet on the 2 nd and 4 th Wednesdays of each month at 7:00pm at the South Berkeley Senior Center, 2939 Ellis Street. All Commission meetings are open to the public.
Complaint Outcome	Cases are either recommended for a hearing or closure through summary dismissal or administrative closure.
Contact	1947 Center Street, Third Floor, Berkeley, CA 94704 Tel: 510-981-4950 TDD: 510-981-6903 Fax: 510-981-4955 E-mail: prc@ci.berkeley.ca.us http:// www.ci.berkeley.ca.us/prc/



VII. COMPLAINT PROCESS





VIII. INVESTIGATION PROCESS

FILING COMPLAINTS

To file a complaint against a Berkeley police officer, a complainant must complete and sign a complaint form. PRC staff will screen the complaint for timeliness of complaint submission.¹ Staff will determine whether to investigate the allegations of misconduct or any BPD policy issues. PRC staff will forward a list of allegations from the complaint to BPD to provide notice that a complaint has been filed against the subject officer/s.

INVESTIGATION OF COMPLAINTS

PRC investigators interview the complainant, witnesses, police officers and they gather relevant evidence. The PRC investigator analyzes police reports, communication dispatch reports, photographs and any other physical or documentary evidence relevant to the complaint. Upon collection of all evidence, the Investigator will prepare a report and recommend whether the case should be closed or forwarded to a Board of Inquiry.

BOARD OF INQUIRY

A Board of Inquiry is an evidentiary hearing of the complaint, consisting of three Commissioners, who review an investigation report and make a determination on the findings of a case. In cases involving the death of a person, the Commission shall sit as a Board of the whole. The hearing provides an opportunity for the Board to question the complainant and police officers about their version of the events forming the complaint

After reviewing the evidence and receiving witness testimony, the Board deliberates and determines findings based upon a "clear and convincing" standard of proof. The Commission could find that the allegations of misconduct against an officer were either sustained, not sustained, unfounded or exonerated. The Commission's findings are forwarded to the complainant, subject officer, City Manager and Chief of Police.

¹Complaints must be filed with the PRC within 90 days of the alleged misconduct; except, in circumstances specified in the PRC regulations, a 90-day extension can be granted by a vote of at least 6 Commissioners. (See Technical Appendix B, Page 3) Officers are not required to attend hearings on late-filed cases and the findings from such hearings cannot be considered for disciplinary action against the officer.



IX. CLOSED HEARINGS

Board of Inquiry	<ul style="list-style-type: none"> • A closed administrative hearing • Not a court of law. • Three Commissioners hear testimony, review a case and make findings. • Findings include whether the complainant's allegations should be sustained, not sustained, unfounded or exonerated.
Procedures	<ol style="list-style-type: none"> 1. Complainant testifies and answers questions from the three Commissioners, subject officer or subject officer's representative. The Complainant is excluded from the hearing after his/her testimony. 2. Civilian witness testifies and answers questions from the three Commissioners, subject officer or subject officer's representative. The witness is excluded from the hearing after his/her testimony. 3. Subject officers testify and answer questions from two Commissioners, unless waived by officer. 4. Three commissioners can question a witness officer. 5. Subject officer may provide a 2-minute closing argument. 6. Commissioners deliberate outside the presence of the officers 7. Commissioners will announce findings to the officers. 8. Findings will be sent to the Complainant, Subject Officer, City Manager and Chief of Police. 9. Officer Appeal Rights: if the Commission sustains an allegation, the officer may appeal the findings to a State Administrative Law Judge (ALJ) under a Caloca appeal. 10. The ALJ's findings are forwarded to the City Manager and Chief of Police.
Investigation Report	<ul style="list-style-type: none"> • Commissioners, subject officers and the officer's representative assigned to a hearing will receive the full confidential report one week before the hearing. • Complainant will receive his/her interview transcript, relevant BPD policies and law and a redacted police report. • Civilian witnesses may receive their interview transcript to refresh their recollection prior to a hearing.
Legal Representation	<p>An attorney or other representative may represent subject officers, but officers may elect to speak for themselves.</p>
Closed to public	<p>Prior to 2007, all PRC Boards of Inquiry were open to the public. In February 2007, an Alameda County Superior Court judge ruled that the PRC complaint investigation and hearing process was subject to confidentiality provisions of Penal Code Section 832.7 and ordered the PRC to close its hearings to the public and maintain the complaint investigation records confidential. (See Berkeley Police Association v. City of Berkeley and City of Berkeley Police Review Commission, Alameda County Superior Court Case No. 2002-057569.)</p> <p>On October 7, 2008, the California Court of Appeal upheld the trial court decision.</p>



X. POLICY SUBCOMMITTEES

The Ordinance establishing the Police Review Commission provides for “community participation in setting and reviewing police department policies, practices and procedures.”

Search of Homes and Third Parties	<ul style="list-style-type: none"> • This subcommittee was established as a result of complaints the PRC received from parents and grandparents, who had a parolee living with them or using their address. • The subcommittee is reviewing BPD policies on how police conduct probation and parole searches, and their impact on third parties.
Officer-Involved Shooting	<ul style="list-style-type: none"> • This subcommittee is reviewing officer tactics in officer-involved shootings and developing policy recommendations in response to the Anita Gay shooting in February 2008.
Crowd Control	<ul style="list-style-type: none"> • In response to protests at the Marine Recruitment Center in 2008, this Subcommittee was formed to work with BPD in creating a crowd control policy that respects the citizens’ right to gather and the police response when crowd control problems occur.
Criminal Intelligence	<ul style="list-style-type: none"> • This subcommittee worked with BPD in developing a policy around how police monitor protest groups and the intelligence information gathered. • The policy was completed in 2008.
Evidence Theft	<ul style="list-style-type: none"> • This subcommittee reviewed an incident involving theft of drugs from the property room and theft of assets seized. • The subcommittee made 28 recommendations to City Council regarding how narcotics property is handled. • The police department accepted 25 out of the 28 recommendations.
Regulations Review	<ul style="list-style-type: none"> • This subcommittee was formed to review the closed hearing procedures after the Court of Appeal decision, to improve the investigation and hearing process.
Mutual Aid Pacts and Agreements	<ul style="list-style-type: none"> • This subcommittee reviewed BPD’s agreements with other law enforcement agencies when they enter Berkeley or work with BPD to perform operations, such as Oakland police.
Vehicle Pursuit	<ul style="list-style-type: none"> • This subcommittee reviewed BPD’s policy on vehicle pursuits and the dangers involved in pursuing suspects. The subcommittee approved BPD’s policy.



XI. MEETINGS

<u>January</u>	
23	Regular Meeting
29	City Council Meeting – Evidence Theft Report Presentation
31	Board of Inquiry – Complainant Ford
<u>February</u>	
4	Board of Inquiry – Complainant Lewis
6	Board of Inquiry – Complainant Nitta
12	Policy Subcommittee Meeting – Evidence Theft
13	Regular Meeting
19	Policy Subcommittee Meeting – Evidence Theft
27	Regular Meeting
<u>March</u>	
10	Policy Subcommittee Meeting – Criminal Intelligence
12	Regular Meeting
12	Closed Session – Lawsuit update
13	Public Hearing: Crowd Control and Marine Recruitment Station
17	Policy Subcommittee Meeting – Evidence Theft
17	Commissioners with City Manager and BPD re: Crowd Control
26	Regular Meeting
26	Closed Session – Lawsuit update
<u>April</u>	
2	Policy Subcommittee Meeting – Crowd Control
2	Policy Subcommittee Meeting – Officer Involved Shooting
7	Policy Subcommittee Meeting – Evidence Theft
9	Regular Meeting
21	Policy Subcommittee Meeting – Evidence Theft
30	Policy Subcommittee Meeting – Crowd Control
<u>May</u>	
14	Regular Meeting
28	Regular Meeting
29	Board of Inquiry – Complainant Raleigh
<u>June</u>	
2	Caloca Appeal
4	Board of Inquiry – Complainant Zhuo
10	Board of Inquiry – Complainant Wesley
11	Regular Meeting
11	Public Hearing: Crowd Control and Marine Recruitment Station
16	Board of Inquiry – Complainant Morse
18	Policy Subcommittee Meeting – Criminal Intelligence
24	City Council Meeting re: Evidence Theft
25	Regular Meeting
<u>July</u>	
1	Board of Inquiry – Complainant Chen
9	Regular Meeting
15	Policy Subcommittee Meeting – Crowd Control
23	Regular Meeting



<u>September</u>	
10	Regular Meeting
10	Policy Subcommittee Meeting – Criminal Intelligence
15	Policy Subcommittee Meeting – Crowd Control
24	Regular Meeting
<u>October</u>	
15	Regular Meeting
20	Board of Inquiry – Complainant Chew
21	Policy Subcommittee Meeting – Crowd Control
28	Closed Session Meeting with City Council
<u>November</u>	
12	Regular Meeting
<u>December</u>	
8	Board of Inquiry – Complainants Kafin, Montag
9	Commissioner Training re: Closed Hearing procedures
10	Regular Meeting – Chair and Vice Chair Elections
11	Commissioner Training re: Officer-Involved Shootings

MEETING STATISTICS

Type of Meeting	Number of Meetings
Regular PRC Meetings	17
Evidence Theft Policy Subcommittee	5
Criminal Intelligence Policy Subcommittee	3
Crowd Control Policy Subcommittee	5
Officer Involved Shooting Policy Subcommittee	1
Special Meetings: Commission with City Officials	3
Public Hearings	2
Boards of Inquiry	10
Trainings	2
Closed Session with Legal Counsel	3
Special Hearings (Caloca)	1
TOTAL MEETINGS	52



XII. TRAINING AND OUTREACH

FIRST PRC TRAINING OF BERKELEY POLICE DEPARTMENT

PRC staff conducted its first ever training of all sworn police officers in the police department on civilian oversight of police, hearing procedures and the Commission's work.



Lt. Rolleri and Chief Douglas Hambleton attend a Regular Commission Meeting

UNIVERSITY OF CALIFORNIA AT BERKELEY - STUDENT INTERNS

PRC worked with U.C. Berkeley's Cal Corps Public Service Center Internship Program, where two students worked at the PRC office and learned about police oversight. The students attended Commission meetings, assisted in drafting investigation reports, and learned the inner operations of a City department.

At the PRC, I learned how important maintaining neutrality is and how to attain it during investigations. I also learned how important it is to enhance police-civilian relations and to foster mutual understanding.

- Vanessa Dougherty
2009 Student Intern



U.C. Berkeley Interns Nancy Perez, Vanessa Dougherty and PRC Officer Victoria Urbi



NATIONAL NIGHT OUT



Left to Right: Nader Kury (Information Technology Dept.),
Commissioner Sharon Kidd, Capt. Cynthia Harris and Thelma Brown (BPD)

In August, PRC staff and Commissioner Kidd participated in BPD's National Night Out, a crime prevention event where neighborhoods host block parties to raise awareness about public safety and meet police, fire and other City officials. PRC worked with BPD to visit various neighborhoods, outreach to the community and raise awareness about the work of the PRC. This event heightened civic duty by showing how neighbors could work together to prevent crime and learn about City resources available to address problems in the community.

COMMISSIONER TRAINING

The full Commission received training on PRC's history, closed hearing procedures and the role of PRC and its stakeholders.

Commissioners attended an "Officer-involved shooting Policy Hearing" at Oakland's Citizens' Police Review Board.

Commissioners received training on an overview of BPD with on-site tour of the police department.

Commissioners attended mandatory ethics training.

The Chair and Vice Chair received a mandatory City Clerk Commission training.



NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (NACOLE)

PRC staff attended the annual NACOLE conference in Ohio. Staff also received updates on developments in police civilian oversight and how the international agencies face similar issues in Berkeley. The conference gave staff an opportunity to share information and form networks with other agencies to problem solve similar issues in police oversight.

WEBSITE

The PRC website is an important way that the PRC serves the community and the nation at large. The website contains extensive information and resources and is frequently updated.

The web site is designed to be user-friendly for consumers and offers access to:

- PRC Complaint form.
- How to File A Complaint With the Berkeley PRC.
- Explanation of PRC Investigation Procedures after a Complaint is filed.
- PRC Ordinances and Regulations.
- Links to other resources regarding police misconduct.
- Information about other civilian oversight bodies.
- Annual statistical reports since 2001.
- Link to PRC meeting agendas and minutes.

The URL is

<http://www.ci.berkeley.ca.us/prc>.



Comm. William White and Comm. Russell Bloom



XIII. A LEADER IN POLICE OVERSIGHT



PRC Officer Victoria Urbi, Chairperson Sherry Smith
Vice Chairperson George Perezvelez

PRC Commissioners and PRC staff serve as a resource for jurisdictions interested in developing a police oversight body to serve their community. Berkeley's PRC was the first citizen oversight body in California. PRC created the model for many such bodies that followed by developing a protocol of independent investigation of police actions and by appointing a civilian review panel to adjudicate the complaints following staff investigation.

PRC remains a leader among national oversight bodies by continuing to recommend changes to police practice in light of our changing times and our evolving community. PRC is singular among police oversight bodies in its commitment to professionalism and to impartial investigation and decision-making. PRC makes itself available as a mentor to communities that seek to improve the level of skill and quality of service they provide.



Comm. Sherman, Comm. White, Chair Smith, Vice Chair Perezvelez, Comm. Edwards,
Comm. Kidd, Comm. Huang, Comm. Bloom



XIV. COMPLAINT STATISTICS

1. CASES OPENED

YEAR	TOTAL CASES OPENED
2004	45
2005	48
2006	34
2007	41
2008	42

In 2008, the PRC received 42 new complaints. On average, PRC received 42 complaints from 2004-2008. In 2006, the PRC received the lowest number of complaints with 34 total complaints and in 2005, PRC received the highest number of complaints with 48 total complaints.

NOTE: The following statistics show higher than normal total cases in 2007, because the PRC did not hear any cases for that year. In September 2006, the Berkeley Police Association (BPA) and the City of Berkeley’s PRC entered into a stipulation to temporarily suspend hearings due to pending litigation.

In February 2007, the trial court issued a decision finding that the PRC’s complaint investigation and hearing process was subject to the confidentiality provisions of Penal Code Section 832.5 and ordered the PRC to close the hearings to the public.

2. ALLEGATIONS

In 2008, PRC staff changed how allegations are counted. Before 2008, PRC counted each allegation along with the number of subject officers associated with each allegation. If a case had one allegation and 3 subject officers, the PRC would count a total of 3 allegations.

The PRC believes that this method of counting allegations only without the number of subject officers shows a more accurate number of allegations per case. All allegations from 2008 shown in this report reflect allegations only without counting the subject officers.

3. PENDING CASES

Since PRC did not hear any cases through a board of inquiry in 2007, 75 open cases were carried over to 2008.

YEAR	CASES CARRIED OVER TO THE NEXT YEAR
2008	29 open cases carried over to 2009
2007	75 open cases carried over to 2008



4. SUMMARY OF CASES OPENED

The following chart shows a summary of all complaints opened in 2008, the cases' progression through the investigation and its current status.

	Open	Case #	Total Allegations	Subject Officers	Total Interviews	Investigation Time	Total Time Case Closed	Disposition
1	1/9	2180	2	1	2	2 mos.	3 mos.	ADMIN. CLOSE
2	1/17	2181	4	1	2	2 weeks	1 year	SUMM. DISM. 2009
3	1/17	2182	4	1	2	2 weeks	1 year	SUMM. DISM 2009
4	1/17	2183	2	1	3	3 weeks	1 year	SUMM. DISM. 2009
5	1/29	2184	5	1	0	0		LATE FILE
6	1/30	2185	4	1	4	6 mos	1 year, 1 month	SUMM. DISM. 2009
7	2/1	2186	0	Policy Issue	1	11 mos.	1 year, 1 month	ADMIN CLOSE 2009
8	2/7	2187	6	1	2	3 mos.	7 mos.	SUMM. DISM
9	2/28	2188	4	1	3		1 year, 3 mos.	HEARING 2009
10	3/3	2190	5	2	4	3.5 mos	5 mos.	ADMIN CLOSE
11	3/7	2191	1	2	1	3 mos.	4 mos.	SUMM. DISM
12	3/13	2192	0	Policy Issue	0			Citizen Petition
13	3/24	2193	6	3	5	4 mos	10 mos.	ADMIN CLOSE 2009
14	3/26	2194	5	3	3	2 mos.	3 mos.	SUMM. DISM
15	3/31	2195	2	3	4	6 mos.	1 year	ADMIN CLOSE
16	4/15	2196	4	3	8	7 mos.	Pending	HEARING 2009
17	4/28	2197	6	2	7	2 mos.	8 mos.	HEARING
18	5/28	2198	3	1	3	3 mos.	7.5 mos.	ADMIN CLOSE 2009
19	5/30	2199	2	1	2	2 mos.	6 mos.	ADMIN CLOSE
20	5/30	2200	4	0	1	1 mo.	6 mos.	ADMIN CLOSE
21	6/16	2201	0	0		n/a		LATE FILE



	Open	Case #	Total Allegations	Subject Officers	Total Interviews	Investigation Time	Total Time Case Closed	Disposition
22	6/26	2202	4	5	5	6 mos.	Pending	ADMIN CLOSE
23	6/30	2203	3	1	4	4 mos.	10 mos.	HEARING 2009
24	7/10	2204	2	1	4	2.5 mos.	Pending	HEARING 2009
25	7/10	2205	4	3	4	4 mos.	5 mos.	ADMIN CLOSE
26	7/14	2206	1	1	2	2.5 mos	3 mos.	SUMM. DISM
27	7/21	2207	2	2	0	0		WITHDREW COMPLAINT
28	8/4	2208	4	0	0	0	4 mos.	ADMIN CLOSE
29	8/19	2209	5	2	3	11 mos.	Pending	HEARING 2009
30	10/15	2210	2	1	1	6 mos.	Pending	
31	8/28	2211	2	2		5 mos.	6 mos.	SUMM. DISM 2009
32	9/12	2212	10	9	10	6 mos.	Pending	
33	9/23	2213	7	5	7	5 mos.	Pending	
34	9/25	2214	3	6	2	5 mos.	6 mos.	ADMIN CLOSE 2009
35	10/7	2215	2	1	2	4 mos.	6 mos.	ADMIN CLOSE
36	10/10	2216	2	4	1	4 mos.	6 mos.	ADMIN CLOSE
37	10/10	2217	2	3	1	5 mos.	Pending	ADMIN CLOSE
38	10/10	2218	2	3	1	5 mos.	Pending	ADMIN CLOSE
39	10/20	2219	1	1	1	5 mos.	5 mos.	ADMIN CLOSE 2009
40	11/14	2220	4	1	2	2 mos.	4.5 mos.	ADMIN CLOSE 2009
41	11/25	2221	2	1	2	2 mos.	4 mos.	ADMIN CLOSE 2009
42	12/5	2222	4	1	2	3 mos.	Pending	SUMM. DISM

Total Complaints: 42

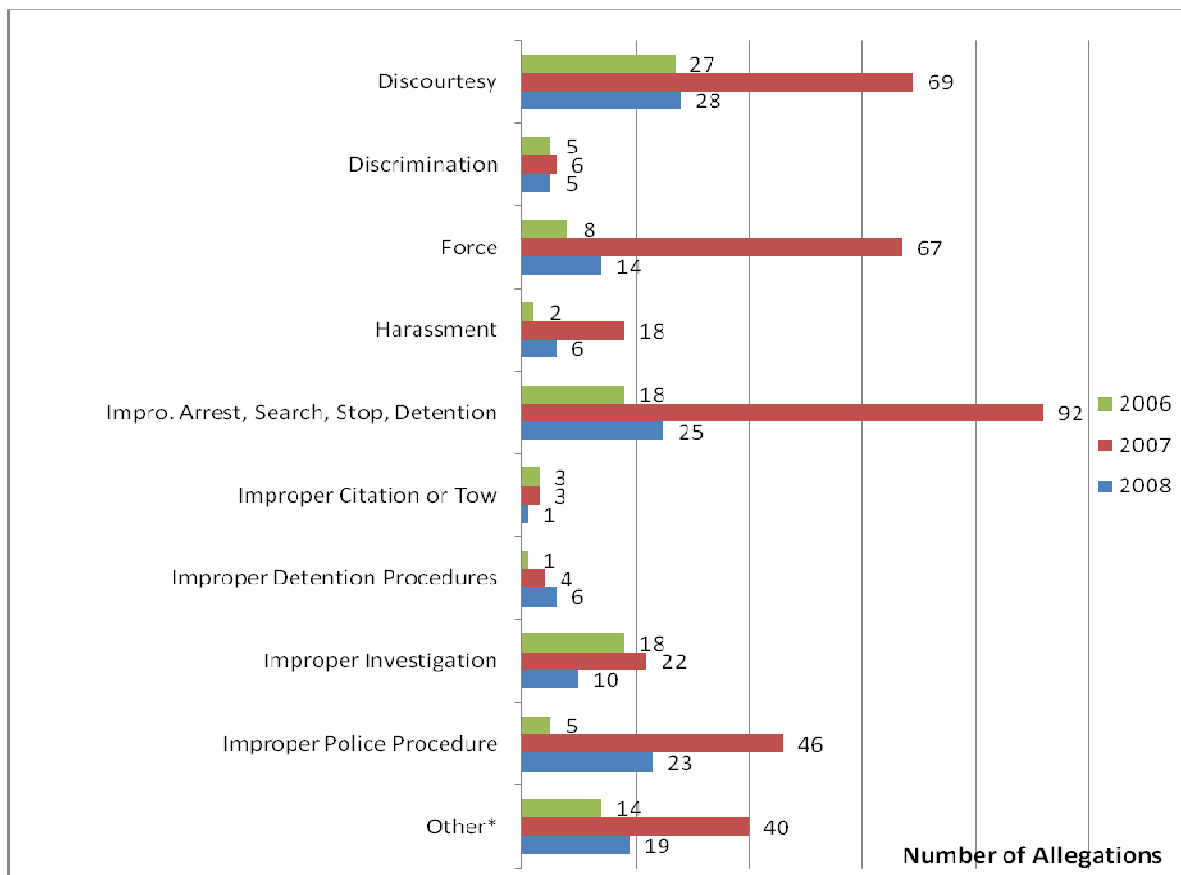
Total Complainants: 45

Note: 4 Complaints have 2 complainants each.

Total Policy Complaints: 2



5. ALLEGATIONS BY YEAR



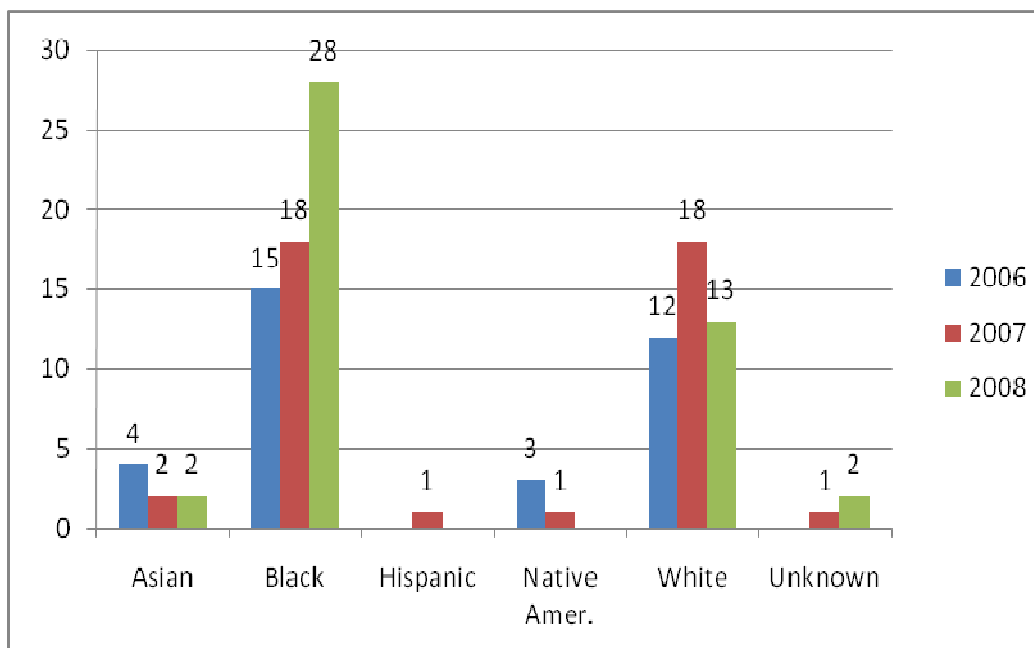
The 2006 and 2007 allegations were counted by adding allegations with each subject officer. The 2007 allegations reflect higher numbers, because there were more complaints involving allegations of improper search of homes, which can involve up to ten officers. **The 2008 allegations were counted by allegations only without adding the subject officers.**

6. TOTAL ALLEGATIONS BY YEAR

	2006	2007	2008
Allegations received when complaint filed:	98	354	141
Allegations after an investigation:	110	348	137
Total Difference:	12 allegations added	6 allegations deleted	4 allegations deleted



7. COMPLAINANT ETHNICITY



There have been a few significant changes in complainant demographics during 2006-2008.

The total number of African American complainants increased each year from 15 in 2006 to 28 in 2008. In 2008, African American complainants comprised 67% of the total complainants. African American men were the highest number of complainants with 15 total complaints. African-American complainants remain a higher percentage in comparison to their percentage in the general population of the City of Berkeley. According to the 2000 census, African Americans constitute 13.3% of the City of Berkeley population, yet in 2008, they represented more than half of PRC complainants.

White complainants increased from 2006 to 2007 and decreased in 2008. A large increase from 2007 to 2008 is the category of “Unknown” representing complainants, who choose not to categorize themselves.

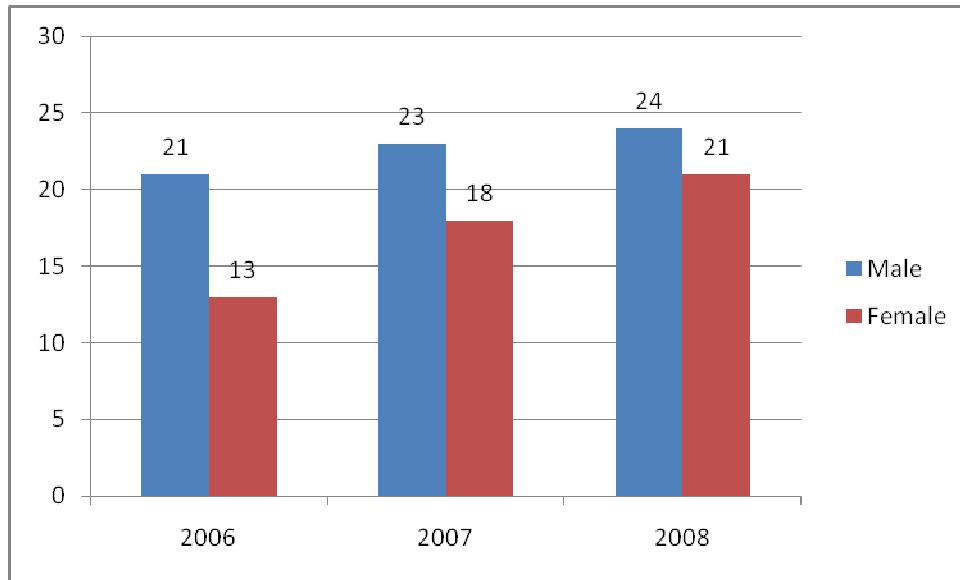
Although the total number of complainants in the graph shows 45 and the PRC received 42 complaints, one complaint received was a policy issue.

2000 CITY OF BERKELEY POPULATION *		
Race	Totals	Percentage
Asian	16,740	16.3%
White	56,691	55.2%
Other	5,604	5.5%
African-American	13,707	13.3%
Hispanic	10,001	9.7%
TOTAL	102,743	100%

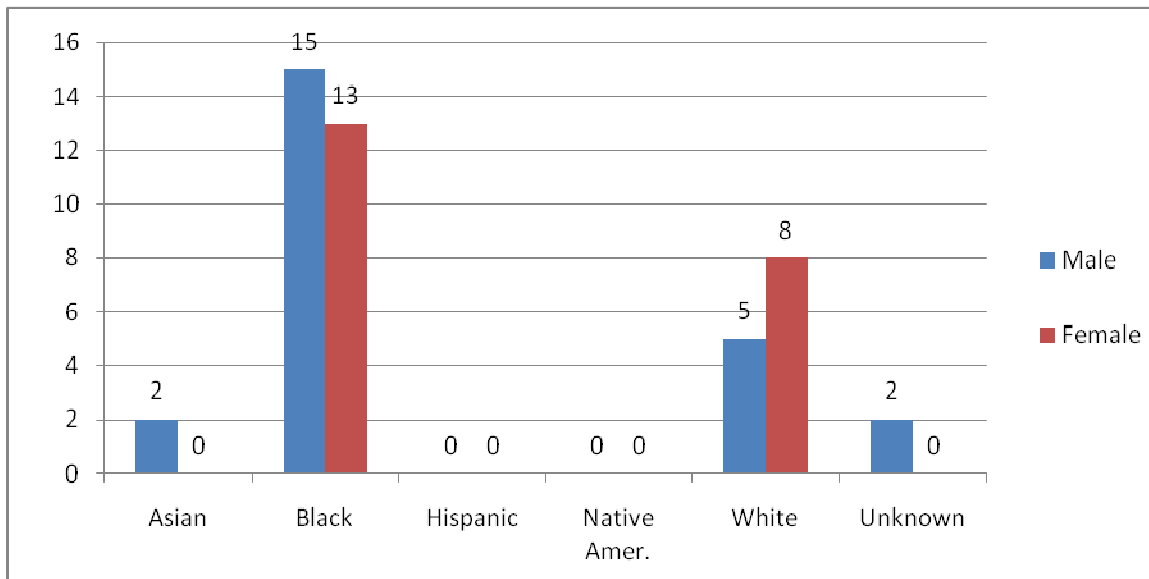
*Information from the 2000 Census



8. COMPLAINANT GENDER

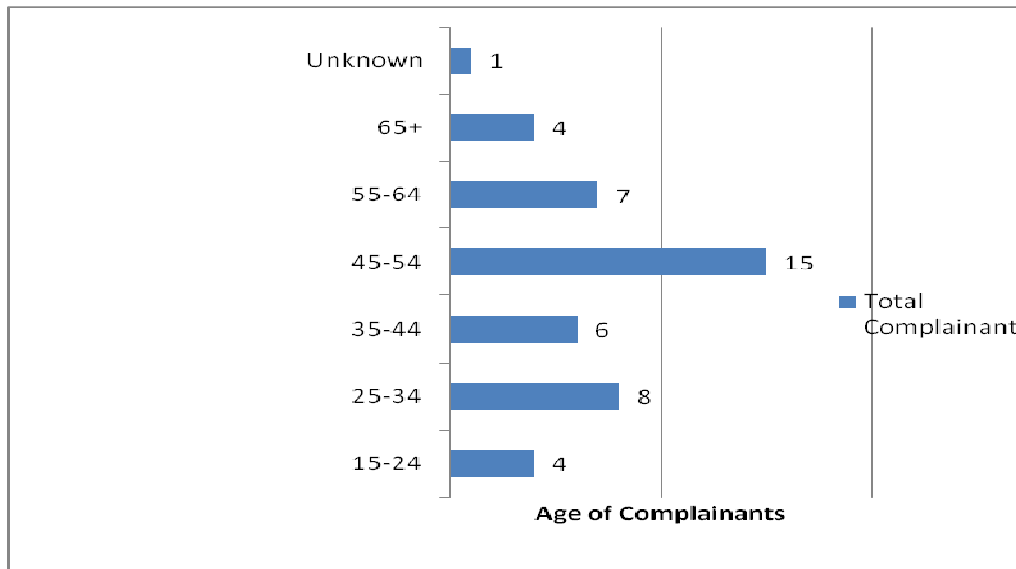


9. COMPLAINANT GENDER AND RACE





10. COMPLAINANT AGE



11. TOTAL INVESTIGATION AND CLOSURE TIME

Total Averages	2008
Investigation Time	4 months
Closure of a Case	7.42 months

The investigation time was calculated from the time the Investigator received the complaint to the time the final investigation report was completed. The investigation time depends on the complexity of the complaint, number of witnesses to interview, whether there is a criminal prosecution and facts to analyze. In cases involving an officer-involved shooting resulting in death, the PRC cannot begin investigating until the criminal prosecution has been completed.

Additionally, the investigation time does not factor in when a hearing has been conducted. The hearing time may take an additional 1-3 months after an investigation has been completed due to witness availability. By the time the hearing is scheduled, the investigation has been concluded and the board of inquiry hears testimony to determine factual findings of the complaint.

If the Commissioner administratively closes or summarily dismisses a case, the case is considered closed. If the case goes to a board of inquiry, the case closes when the findings report is sent to the City Manager and Chief of Police.



12. BOARDS OF INQUIRY

Date	CASE #	Main Allegations	Commissioners	Hearing Cancelled	Hearing Held	Allegations, Findings
Jan 31	2138	Force, Discrimination, Detention, Search	Kidd Smith Edwards		X	9 Allegations 1 Sustained
Feb 4	2081	Discourtesy, Discrimination	White Kidd Perezvelez		X	4 Allegations 0 Sustained
Feb 6	2167	Discourtesy, Discrimination, Detention, Abusive Language	Kidd Perezvelez Sherman		X	7 Allegations 3 Sustained
May 29	2153	Discourtesy, Procedures, Investigation	Huang Sherman Perezvelez	Comp. no-show. Case closed.		
Jun 4	2179	Force, Detention, Arrest, Search, Citation	White Perezvelez Huang		X	9 Allegations 1 Sustained
Jun 10	2156	Force, Search, Discourtesy, Procedures, Abusive Language	Huang Kidd White		X	8 Allegations 3 Sustained
Jun 16	2178	Force, Discourtesy	Kidd Perezvelez Edwards		X	3 Allegations 0 Sustained
Jul 1	2120	Discourtesy, Discrimination, Procedures, Investigation	Edwards Huang Sherman	Closed due to deadline expiration.		
Oct 20	2193	Procedures, Discourtesy	Edwards Huang Sherman	Hearing cancelled		
Dec 8	2197	Discrimination, Force, Arrest, Procedures, Search, Investigation	Kidd Perezvelez White		X	6 Allegations 1 Sustained



13. BOARDS OF INQUIRY FINDINGS BY YEAR

	2005	2006	2007	2008
Allegations Sustained	16	5	0	9
Allegations Not Sustained	36	14	0	20
Allegations Exonerated	14	5	0	20
Allegations Unfounded	6	5	0	9
Total Cases Closed	11	6	0	7

14. CASES CLOSED BY YEAR

REASON CASE CLOSED	2005	2006	2007	2008
Board of Inquiry	11	6	0	7
Summary Dismissal	5	9	0	11
Administrative Closure - 1 Year Expiration	8	19	0	65 (43)
Policy Cases Closed	0	0	0	1
Late File Rejected	2	3	3	2
Total Cases Closed Excluding 1-Year Expiration	26	35	3	43
Total Cases Closed	26	35	3	86

In 2008, the PRC closed 86 cases. This number is higher than previous years, because as stated above, from September 2006-November 2007, the PRC did not hear or close any cases. 43 out of the 86 cases were closed, because on October 7, 2008, a Court of Appeal upheld the trial court’s decision that the PRC proceedings are subject to Government Code §3304 that investigations must be completed within one year. Prior to 2007, the PRC was not subject to the one-year limitation period.

Board of Inquiry: A three-member panel comprised of Commissioners conduct an administrative hearing. In 2008, the PRC held 7 hearings. There were no hearings in 2007 due to pending litigation.



Summary Dismissal: The PRC closed 11 cases, because complaints must allege facts, which, if true, would establish that misconduct occurred. The Commission may dismiss a complaint if it finds the complaint clearly lacked merit.

Administrative Closure: The PRC closed 65 cases through administrative closure, which does not constitute a judgment on the merits of the complaint. These cases were closed, because the complainant was unavailable, did not cooperate with the investigation, the officer is no longer a member of BPD or the complaint was resolved through other means, such as mediation.

15. 2008 CASES CLOSED, BY YEAR CASE WAS FILED

Year Case Opened	Total Cases Closed In 2008
2005	8
2006	26
2007	38
2008	14
Total Cases Closed	86

16. CALOCA OFFICER APPEAL: POST PRC REVIEW

Year	Cases with <i>Caloca</i> Review	<i>Caloca</i> Findings
2008	1 Case, 1 Allegation	1 Sustained Allegation Upheld
2007	0 Cases	
2006	0 Cases	
2005	8 Cases, 13 Allegations	3 Sustained Allegations Upheld, 10 Sustained Allegations Not Upheld
2004	6 Cases, 10 Allegations	3 Sustained Allegations Upheld, 7 Sustained Allegations Not Upheld
2003	14 Cases, 28 Allegations	4 Sustained Allegations Upheld, 24 Sustained Allegations Not Upheld

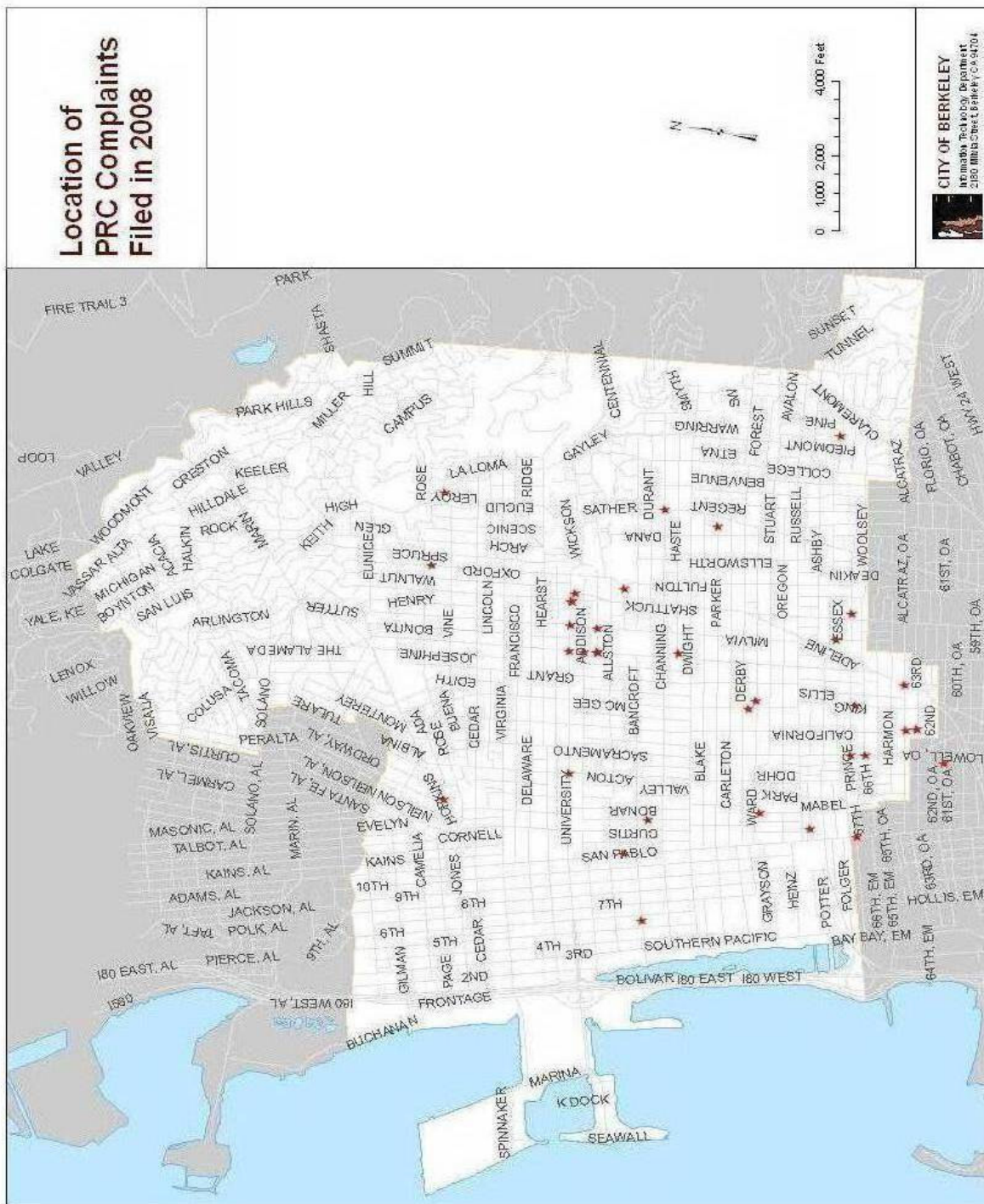
Since June 2002, the City of Berkeley has implemented an appeal process for police officers, who have had misconduct allegations sustained by the PRC. The appeal procedures were developed after a demand by the Berkley Police Association that the City comply with the Court of Appeals decision in Caloca v. County of San Diego (2002) 102 Cal. App. 4th 433 ("*Caloca*"). In 2005, the City contracted with the Office of Administrative Hearings (OAH) in Oakland to adjudicate the *Caloca* appeal hearings.

During 2006-2007, PRC had not received appeal findings and thus no *Caloca* hearings had been requested.

In 2008, a PRC Board of Inquiry sustained one allegation in a case. The subject officer appealed the board's findings to an Administrative Law Judge (ALJ). The ALJ affirmed the PRC's sustained findings.



17. INCIDENT LOCATIONS



The majority of complaints are located in the Central, South and West Berkeley areas.

TECHNICAL APPENDIX

Appendix A

PRC ORDINANCE

Ordinance No. 4644-N.S.

**Establishing a
Police Review Commission**

CITY OF BERKELEY

ORDINANCE NO. 4644-N.S.

**Establishing a Police Review Commission
Adopted by People of Berkeley
April 17, 1973**

(Referenced by Court Decision April 12, 1976)

**Amended To: April 15, 1975
Annotated: June 9, 1976
Amended To: December 3, 1982**

POLICE REVIEW COMMISSION

***POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704
510.981-4950 TDD: 510.981.6903 FAX: 510.981-4955
e-mail: prc@ci.berkeley.ca.us [http:// www.ci.berkeley.ca.us/prc/](http://www.ci.berkeley.ca.us/prc/)***

ORDINANCE NO. 4644-N.S.

ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION.

The people of the City of Berkeley do ordain as follows:

Section 1. The general purpose of this Ordinance is to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Section 2. There is hereby established a Police Review Commission for the City of Berkeley. Said Commission shall consist of nine (9) members. Each Council member shall appoint (1) member to the Commission. All members shall be residents of the City of Berkeley. No officer or employee of the City shall be appointed to the Commission.

~~Section 3. The term of each member shall be two (2) years commencing on October 4 of each odd numbered year and ending on October 3 of each succeeding odd numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council. No member shall serve more than two (2) consecutive terms or portions thereof.*~~

Section 4. Vacancies on said Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled for the unexpired term by the City Councilmember whose appointee has ceased to serve. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term. A member of the Commission may be granted a leave of absence not to exceed three (3) months by the City Council, and a temporary vacancy shall thereupon exist for the period of such leave of absence. During the period of such temporary vacancy, the Council may fill such vacancy by a temporary appointment to said Commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave

*Section 3 amended December 3, 1982; see attachment.

of absence so granted, the member shall automatically resume full and permanent membership on said Commission.

Section 5. The Commission shall elect one of its members as Chairperson and one as Vice-Chairperson, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment.

Section 6. The Police Review Commission shall be a working Commission. In order to compensate Commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, Commissioners shall receive \$3.00 (three dollars) per hour, but in no case shall compensation for any one Commissioner exceed \$200 (two hundred dollars) per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Commission and filed with the office of City Clerk.

~~Such clerical and secretarial assistance as are needed by the Commission shall be provided by the office of the City Clerk. The Commission is further authorized to secure and define the duties of same, in the manner consistent with existing law, as it may deem necessary or appropriate.*~~

Section 7. The Commission shall establish a regular time and place of meeting and shall meet regularly at least once every two weeks or more frequently as workload requires. The regular place of meeting shall be in an appropriate central location in the City capable of accommodating at least 75 people, but shall not be held in the building in which the Police Department is located. At least once every three (3) months, or more frequently if the Commission desires, the Commission may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people in the various neighborhoods in the City at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Commission, upon personal notice being given to all members or written notice being mailed to each member and received at least thirty-six (36) hours prior to such meeting, unless such notice is waived in writing.

All Commission meetings, and agendas for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the City at least three

*Language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeal on April 12, 1976.

(3) days prior to regular meetings, and at the same time as members are notified of special meetings. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the City as are designated by the Commission.

All meetings shall be open to the public, unless the Commission, in order to protect the rights and privacy of individuals, decides otherwise and if such closed meeting is not waived by the individual concerned. The Commission shall cause to be kept a proper record of its proceedings. The records and files of the Commission and its officers shall include, but not be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and shall be kept and open for inspection by the public at reasonable times in the office of the Secretary of the Commission.

A majority of the appointed Commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action.

The Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of this ordinance, provided that, membership on such subcommittees shall not be limited to the Commission members but may include members of the public who express an interest in the business of the subcommittees. The members of such subcommittees shall serve without compensation.

Section 8. On the petition of fifty (50) or more citizens in the City of Berkeley filed in the office of the Secretary of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed.

Section 9. ~~In carrying out its objectives, the Commission shall receive prompt and full cooperation and assistance from all departments, officers, and officials of the City of Berkeley. The Chief of Police, or his deputy if the Chief is ill or absent from the City, shall as part of his duties attend meetings of the Commission when so requested by the Commission, and shall provide such information, documents, or materials as the Commission may request. The Commission may also require the attendance at its meeting of any other Police Department personnel or City officials it deems appropriate in the carrying out of its responsibilities under this Ordinance.*~~

*The language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.

Section 10. The Commission established by this Ordinance shall have the following powers and duties:

a) to advise and make recommendations to the public, the City Council, and the City Manager;

b) to review and make recommendations concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law enforcement generally, such review and recommendation to extend to, but not be limited to, the following:

- i) treatment of rape victims;
- ii) police relationship with minority communities;
- iii) use of weapons and equipment;
- iv) hiring and training;
- v) priorities for policing and patrolling;
- vi) budget development;
- viii) other concerns as specified from time to time by the
City Council;

~~e) to request and receive promptly such written and unwritten information, documents, and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this Ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each of all of which are hereby directed out of its responsibilities; provided that information the disclosure of which would impair the right of privacy of specific individuals or prejudice pending litigation concerning them shall not be required to be made available to the Commission except in general form to the extent police activities in specific cases reflect Police Department policies and; provided that the individual involved in the specific situation may consent in writing to the disclosure of information concerning him or her, in which case it shall be made available to the Commission;*~~

d) to receive complaints directed against the Police Department and any of its officers and employees, and fully and completely investigate said complaints and make such recommendations and give such advice ~~without limitation including disciplinary and action~~ relating to departmental policies and procedures to the City Council and the City Manager in connection therewith as the Commission in its discretion deems advisable; provided as follows:

*The language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeal on April 12, 1976.

- i) that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible;
- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred to the Commission for investigation ~~and that the Police Department shall conduct its own investigation only at the request of said Commission, and;~~
- iii) that regular quarterly reports relating to the number, kind, and status of all such complaints shall be made by the Commission to the City Council and the City Manager;^{**}

e) consistent with provisions of the Berkeley City Charter and to the extent permissible by law, to exercise the power of subpoena;

f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes.

Section 11. That Ordinance No. 4061-N.S. and Ordinance No. 4149-N.S. and No. 4887-N.S. in amendment thereof are each and all repealed by this Bill. To assist in an orderly transition between the Citizens Committee on Public Safety, herein abolished, and the Police Review Commission established by this Bill, all files, records, books, and publications, and documents of whatever kind of the former Committee shall be promptly deposited in the Office of the City Manager for the use and benefit of the newly created Police Review Commission.

Section 12. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provisions or applications, and to this end any phrase, section, sentence, or word is declared to be severable.

In effect: April 17, 1973

^{**}The language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.

ORDINANCE NO. 5503-N.S.

AMENDING SECTION 3 OF INITIATIVE ORDINANCE NO. 4644-N.S. ENTITLED "ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES, AND ACTIVITIES OF SAID COMMISSION."

BE IT ORDAINED by the People of the City of Berkeley as follows:

That Section 3 of Initiative Ordinance No. 4644-N.S., as above entitled, is hereby amended to read as follows:

Section 3. The term of each member shall be two (2) years commencing on December 1 of each even numbered year and ending on November 30 of each succeeding even numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council.

This Ordinance was approved by the electors of the City of Berkeley at the General Municipal Election held in the City of Berkeley on November 2, 1982.

In effect: December 3, 1982

INDEX TO TEXT CHANGES

<u>Section</u>	<u>Action</u>	<u>Ordinance No.</u>	<u>Eff. Date</u>	
2	Amended	4779-N.S. (Vote of the People)	4-15-75	
3	Amended	4779-N.S. (Vote of the People)	4-15-75	
Attached	3	Amended	5503-N.S. (Vote of the People)	12-3-82

Appendix B

PRC REGULATIONS

CITY OF BERKELEY

REGULATIONS

**For Handling Complaints Against
Members of the Police Department**

POLICE REVIEW COMMISSION

**POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704
510.981-4950 TDD: 510.981.6903 FAX: 510.981-4955
e-mail: prc@ci.berkeley.ca.us [http:// www.ci.berkeley.ca.us/prc/](http://www.ci.berkeley.ca.us/prc/)**

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BERKELEY POLICE REVIEW COMMISSION

REGULATIONS FOR HANDLING COMPLAINTS AGAINST MEMBERS OF THE POLICE DEPARTMENT

(Adopted May 13, 1975)
(Amended August 8, 1984)
(Amended April 30, 1990)
(Amended May 26, 1993)
(Amended November 7, 2007)

PREAMBLE

The following procedures for handling complaints against members of the Berkeley Police Department 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, provides a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department and these regulations are adopted by the Commission to carry out that purpose.

The Ordinance gives the Commission the power to adopt rules and regulations and develop such procedures for its own activities and investigations. The intent of the Ordinance reflected in these procedures is to give citizens the means to have complaints against the Berkeley Police Department and its employees investigated, heard, and resolved. The Ordinance, by setting up this Commission made up of residents of this community, intended to establish a process available to any citizen, free of charge and without the need for attorneys or other professional advisors.

The Commission is not a court of law and does not conduct its business according to the strict rules of evidence. Consistent with the powers granted to it by the enabling Ordinance, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interest of the City of Berkeley. These regulations have been further revised to reflect the Alameda County Superior Court's judgment in June 2007 and its subsequent compliance order in September 2007 that the Commission's Boards of Inquiry and related Commission records must be kept confidential. Confidentiality provisions have been added to these regulations to comply with the Court's order pending the outcome of the City's appeal to the California Court of Appeal of *Berkeley Police Association v. City of Berkeley and City of Berkeley Police Review Commission*, Alameda County Superior Court Case No. 2002-057569.

I. GENERAL

1. Application of Regulations-Confidentiality of Complaint proceedings. The following regulations shall be employed by the Berkeley Police Review Commission to govern the receipt and processing of complaints. The Commission shall receive and process complaints in accordance with these regulations, and shall advise and make recommendations concerning its findings directly to the Chief of Police, the City Manager and the City Council. The records of these investigations shall be treated as confidential and will not be disclosed to members of the public, except that information and documents which are public (such as police reports released to the public pursuant to the Berkeley Police's department's policies and procedures on public records), shall not be withheld from the parties or the public. All Board of Inquiry and Commission proceedings relating to an investigation of an individual complaint against an officer shall be closed to the public, including to any witnesses, except for the subject officer and his or her representative. An accused officer shall have a right to inspect documents for the purpose of facilitating the investigation and disposition of the complaint.

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

- a. Complaint: An allegation of misconduct against a member of the Berkeley Police Department (including employees of the Public Safety Communications Center) while engaged in police functions, or of an improper policy or practice of the Berkeley Police Department.
- b. Aggrieved Person: Any person directly affected by the alleged police misconduct, policy, or practice as defined above.
- c. Complainant: The Aggrieved Person filing the complaint.
- d. BPD Member: A sworn officer or other employee of the Berkeley Police Department (see Complaint definition).
- e. Subject Officer: A BPD member against whom a complaint is filed.
- f. Commission or PRC: The Berkeley Police Review Commission.
- g. Departmental Representative: That BPD member designated by the Chief to appear at a Board of Inquiry or before the Commission to speak on behalf of the Berkeley Police Department.
- h. BPD Member Witness: A BPD member, not a subject officer, who has personal knowledge of events concerning a complaint, and whose presence is reasonably required by a Board of Inquiry.

- i. Investigator: A staff investigator employed by the Office of the City Manager and assigned to the PRC.
- j. Board of Inquiry: A Board impaneled by the PRC to hear complaints.

II. PROCESSING COMPLAINTS

1. Initiation of Complaints

- a. Complaints may be made by an aggrieved person. No complaint will be deemed filed with the Commission until it has been reduced to writing and signed by the Complainant. Complaint forms will conclude with the following words: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my verbal testimony before the Board of Inquiry shall be given under oath." Nothing in these regulations or the Commission's hearing procedures shall be read to preclude the complainant from disclosing any information about the incident which is the subject of the complaint where such information is based either on his or her own recollection, observation or independent investigation of the incident or on public information.
- b. All complaints shall be filed within ninety (90) calendar days of the alleged misconduct, and any complaint not filed within ninety (90) calendar days shall be dismissed; provided, however, that a complaint may be filed within an additional ninety (90) calendar days if at least six (6) Commissioners vote that the Complainant has demonstrated by clear and convincing evidence that failure to file the complaint within the initial ninety (90) calendar day statutory period was the result of inadvertence, mistake, surprise, or excusable neglect; provided, however, that the running of such ninety (90) calendar day period shall be tolled when a Complainant is incapacitated or otherwise prevented from filing such complaint. Lack of knowledge of the existence of the Commission or its complaint procedures shall not constitute mistake, inadvertence, surprise, or excusable neglect in any case.

The findings of the Commission in cases which have been filed during the extension period will not be considered by the City Manager or Police Chief in any disciplinary actions.

Subject Officer testimony is not mandatory in hearings of cases, which are filed during the ninety (90) day extension period.

- c. Complaints must allege facts, which, if true, would establish that misconduct occurred. Complaints that do not allege such misconduct shall be referred by the Investigator to the Commission for summary dismissal.

- d. If there is no aggrieved person able to initiate a complaint, or in any case involving the death of a person, the Commission may, at any time, with five (5) affirmative votes, authorize an investigation or such other action as it deems appropriate.

2. Recording of Complaints and Informing Interested Parties

- a. The Commission shall maintain a central register of all complaints filed. Within twenty (20) working days after the filing of a complaint, the Investigator shall notify the Complainant, the Chief of Police, and each identified Subject Officer that a complaint has been filed, the allegations of the complaint, and that the matter is under investigation. Delivery to the Police Department shall constitute notice for BPD members. In the event that notice is not given within the time limit set forth above, the complaint shall be dismissed unless good cause is shown as determined by the Commission.
- b. In addition to the notice, the signed complaint form shall be available for review and copying at the PRC office by each Subject Officer prior to being interviewed by the Investigator. If no interview with the Subject Officer is conducted prior to the issuance of the investigative report, a copy of the signed complaint form shall be furnished to him/her. If any of the documents included in, or attached to, the Investigative Report are public records, such as police reports, police department regulations or training bulletins, etc., these shall remain public records, and copies of such documents shall be made available to the complainant and subject officer at no charge.

3. Mediation

- a. Definition - Mediation is an informal, confidential process, held before one (1) Commissioner and attended by the Complainant and the subject BPD member for the purpose of fully, thoroughly, and frankly discussing the alleged misconduct and attempting to arrive at a mutually agreeable resolution of the complaint. Mediation may be considered in all cases except those involving the death of an individual.

Mediation will be attempted when all of the following parties agree: 1) Complainant, 2) Commission, 3) Police Department, and 4) Subject Officer.

Successful mediation shall be defined as a process in which the parties have heard, clarified, and understood the issues and each other's point of view. This may result in agreement or an agreement to disagree.

- b. Election - The Investigator shall, prior to the filing of a complaint, inform the Complainant of the PRC process, including the possibility of mediation.

If the Complainant elects mediation, the Investigator shall review the allegations, determine if the complaint is appropriate for mediation, and if so, notify the Police Department. Such review and notification shall occur within ten (10) calendar days.

If referred to the Department, the Department shall have ten (10) calendar days to review the allegations, determine if the complaint is appropriate for mediation, and if so, notify the Subject Officer.

If referred to the Subject Officer, the Subject Officer shall have ten (10) calendar days from the date of notification to elect mediation. If Subject Officer elects mediation, he/she must agree, as a condition of mediation, to toll the City's 120-day disciplinary deadline for the length of the mediation process, which shall include the appeal process.

- c. Mediator Selection - If all parties agree to mediation, the Investigator will provide the Complainant and the Subject Officer with a list of three possible PRC Commission Mediators. The list will be accompanied by appropriate biographical information on each Commissioner. Both the Complainant and the Subject Officer may then, within ten (10) calendar days, select two (2) Commissioners who are acceptable to them. The Investigator shall then appoint a Mediator from those selected and within ten (10) calendar days schedule a mediation hearing at a time convenient for all parties.
- d. Mediation Sessions - The mediation sessions should be completed within thirty (30) calendar days of appointment of mediator. However, the mediation may continue as long as the Mediator feels that progress is being made towards resolution of differences between the parties.
- e. Successful Mediation - If mediation is successful (as defined in 3.a. above), the Mediator will provide written notice (see Exhibit A) to the PRC and the Department within five (5) calendar days of the last mediation session.
- f. Breakdown of Mediation - If both parties attempt mediation in good faith yet are unable to make substantial progress towards resolution, the Mediator may terminate the sessions.

Once the Mediator makes this decision, both parties will be notified and the Complainant will be advised of his/her right to proceed with the official PRC investigation and hearing of the complaint.

If the Mediator determines that the Subject Officer is acting in bad faith, the mediation may be terminated and the Complainant advised of his/her right to proceed with the official PRC investigation and hearing of the complaint.

If the Mediator determines that the Complainant is acting in bad faith, the Mediator may terminate mediation and no further action will be taken on this matter by the Commission, subject to the appeal rights described in Section II.3.g.

- g. Appeal of Mediator's Decision - Either party, within ten (10) calendar days of the termination of the mediation, may petition the full Commission for review of the Mediator's decision.

Within thirty (30) calendar days of filing of an appeal, the Commission may, if good cause is determined by a vote of five Commissioners (exclusive of the Commissioner/Mediator), grant the petition for review and either reinstitute mediation, dismiss the complaint, or order a formal PRC investigation.

If mediation is reinstated, a new Mediator will be selected under the procedures described in Section II.3.c.

- h. Records of mediation will be destroyed one year from the date mediation is elected by the Complainant.

- 4. Investigations/Conduct/Timetables. The Investigator shall interview the Complainant(s) and Subject Officer(s). The Investigator should interview witnesses and other persons likely to have information concerning the complaint, and shall assemble all other relevant information. The confidential Investigative Report shall be made available for inspection by the Subject Officer or his/her Representative within seventy-five (75) calendar days after the filing of the complaint. The Commissioners assigned to a Board of Inquiry shall receive the full Investigative Report seven (7) days before a scheduled Board of Inquiry, but shall return the confidential portions thereof to the PRC staff after the matter to which they relate has been concluded.

In the absence of good cause, failure of the Investigator to complete and submit the report within said period may result in a summary dismissal of the case. Interviews are to be taped when practicable, and such tapes shall be preserved for 100 days or until the City Manager makes his final disposition of the complaint, whichever is later.

The initial PRC report of the investigation should include, at a minimum, an interview of the Complainant, Subject Officer, and all principal percipient witnesses, together with the Berkeley Police Department and/or City Rule and Regulation, which was allegedly violated by the Subject Officer.

- a. Manner of Conducting Investigations. The investigation shall be conducted in compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3304. The investigation shall be conducted in a manner designed to produce a minimum of inconvenience and embarrassment to all parties. When possible, BPD

members shall not be contacted at home, and others should not be contacted at their place of employment.

- b. Notice of Rights to Persons Involved in Litigation. In the event that litigation relating to the matter of the complaint is known to be commenced or to be contemplated by or against any party to a complaint, the Investigator shall suggest that such party consult with an attorney about the advisability or effect of filing a complaint with the PRC.
- c. Notice of Constitutional Rights. Subject Officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit B). While all BPD members have a right to invoke the Fifth Amendment, BPD employees also have a duty to answer questions before the PRC regarding conduct and observations which arise in the course of their employment and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not in any manner be considered by the Commission in its disposition of a complaint.
- d. Statements of Witnesses. Whenever the Investigator takes a statement from any Complainant, BPD Member, Subject Officer, BPD Member Witness, Witness, or any other person, said statement shall be tape-recorded, whenever practicable, a summary drafted by the Investigator, and said summary shall, whenever practicable, be signed by the person who gave said statement. The Investigator shall make every reasonable effort to obtain the signature of each person on their statement. Tape recordings of each statement shall be kept and preserved for 100 days or until the case is finally disposed of by the PRC and its decision has been reviewed by the City Manager.
- e. Criminal Proceedings. In the event that criminal proceedings relating to the matter of the complaint are known to be commenced against the Subject Officer, no investigation shall be undertaken beyond the filing, lodging, and docketing of the complaint. The PRC shall undertake no investigation until the criminal matter has been adjudicated or the authorities have rendered a final decision not to commence any such proceedings. During the pendency of any such contemplated or commenced criminal proceedings, all time limits applicable to the processing of PRC complaints (with the exception of the initial filing requirements set forth in paragraph 1.b., supra) shall be tolled.

Whenever a PRC investigation is tolled as provided in Paragraph e., the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:

- (1) The original Communications Center tapes relevant to the complaint.
- (2) All police reports, records, and documentation of the evidence.

- (3) Names, addresses, telephone numbers, and statements of all witnesses.
5. Notification to the Subject Officer. Immediately after completion of the Investigative Report, the Investigator shall provide to each Subject Officer or his/her representative, if any, and the Chief of Police the following:
- a. Written notice that the complaint will be considered by a Board of Inquiry in a closed hearing and that the subject officer and his/her representative, if any, will have a right to inspect the entire report.
 - b. Any Investigators' recommendations dealing solely with summary disposition or procedural matters.
 - c. All public records, such as police reports, departmental regulations, included in the Investigative Report and/or attachments thereto.
 - d. Written notice that the subject officer may consult an attorney if desired, and that an attorney may represent him/her at the hearing, but that an attorney will not be required.
 - e. In the event the PRC is notified that a Subject Officer is represented by legal counsel, the PRC shall thereafter send, by mail, to legal counsel's office copies of any materials and notifications provided to the Subject Officer(s).
6. Notification to Complainant. Immediately after completion of the Investigative report the Investigator shall provide to the Complainant the following:
- a. Written notice that the complaint will be considered by a Board of Inquiry in a closed hearing.
 - b. All public records, such as police reports, departmental regulations, included in the Investigative Report and/or attachments thereto.
7. Administrative Closure. Pursuant to the grounds set forth below, a complaint of individual officer misconduct may, upon recommendation of a member of the Police Review Commission or Staff, be closed by a majority vote of Commissioners. All considerations by the Commission for administrative closure shall occur during closed session at a regular business meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the results of investigation shall be made available to the office of the City Manager and the Police Department.

Administrative Closure does not constitute a judgment on the merits of the complaint. The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- 1) Unavailability of complainant where staff have attempted at least three telephone and/or mail contacts to complainant's last available address.

- 2) Mootness of the complaint including but not limited to situations where the employment of the subject officer has been terminated or where the complaint has been resolved by other means (e.g. mediation).
- 3) Failure of the complainant to cooperate including but not limited to repeated refusal of a complainant to submit to an interview or to make available essential evidence, and other similar action or inaction by a complainant that compromises the integrity of the investigation or produces a significant prejudicial effect.

The complaining party shall be notified of the opportunity to address the commission during closed session at this meeting and such notice shall be sent no later than five days prior to said meeting.

III. BOARDS OF INQUIRY AND HEARINGS

1. No Contest Response. Subject Officer may enter a written response of "no contest" at any time before a hearing.
 - a. A response of "no contest" indicates that the Subject Officer accepts the allegations of the complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the "no contest" response in any consideration of the complaint by the City Manager.
 - b. Upon receipt of a "no contest" response, the Investigator shall refer the file and the findings of "no contest" to the City Manager for appropriate action.
2. Waiver of Hearing. The Commission shall have the discretion, with the concurrence of the Accused Officer and the Complainant, to consider any case upon interview statements, obtained from the Complainant and Subject Officer and any other witnesses, without the necessity of a hearing. The initial request to proceed on this basis may be made either by the Complainant or the Subject Officer. The Accused Officer(s) will sign a written waiver form giving up his/her right to a hearing.
3. Composition. A Board of Inquiry shall consist of three members of the Commission, one of whom shall be selected by the Board as Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of six (6) Commissioners, the Commission shall sit as a Board of the whole, with a minimum of six (6) Commissioners.
4. Designation of Boards of Inquiry
 - a. Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the cases to be heard. The Commission will keep a record of

the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period.

- b. If any member of a Board of Inquiry becomes unavailable for any reason, he or she shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to the subject officer. If a Commissioner is substituted within seven (7) calendar days of a Board of Inquiry, the subject officer will retain the right to challenge said Commissioner for cause under Paragraph 5 below. The notice of intent to challenge a substituted Commissioner must be made as soon as possible prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the Board. If a Board of Inquiry agrees to reschedule a hearing due to the unavailability for any reason of the Complainant(s) or Subject Officer(s) or the subject officer's legal counsel, the case or cases assigned to each Board shall be reassigned to another Board of Inquiry. Once a hearing of a case has been convened by a Board of Inquiry, the same Board shall consider the case to final disposition.

5. Challenges of Commissioners

- a. Challenge for Conflict of Interest or Bias. A Commissioner who has personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on such Board. Personal interest in the outcome of a Board of Inquiry does not include holding or manifesting any political or social attitude or belief, which does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:
 - (1) Familial relationship or close friendship with parties material to the inquiry;
 - (2) Witnessing events material to the inquiry from a non-neutral perspective;
 - (3) Having a financial interest in the outcome of the inquiry;
 - (4) Holding a bias against a particular party that is sufficient to impair the Commissioner's impartiality.
- b. Procedure. Within seven (7) calendar days after the date on which the Commissioners furnished notice of a Board of Inquiry, including the names of the Commissioners constituting that Board, the subject officer(s) may file a written challenge for cause to any Commissioner hearing the complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Paragraph 5.a. above. When a challenge for cause is filed, the Chairperson shall contact the challenged Commissioner as soon as possible, and if the Commissioner agrees that the challenge is for good cause, or otherwise agrees, the Chairperson shall ask another Commissioner to serve. If the challenged Commissioner does not agree that the challenge is for good cause, the Chairperson shall poll the other members of the

- Board, and if both agree that the challenge is for good cause the Chairperson shall so notify the challenged Commissioner and ask another to serve. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be incorporated in the investigative packet as part of the record of the complaint.
- c. Replacement of Challenged Commissioners. Any Commissioner removed, or unable to serve for any reason shall be replaced by another Commissioner.
6. Commissioner Comment. Commission members shall not make any public comment on any complaints.
 - a. No member of the PRC shall discuss or listen to discussion of the facts or analysis of any matter which is the subject of a complaint prior to its hearing.
 - b. No member of the Commission shall pledge or promise to vote in any particular manner in any pending complaint.
 - c. Failure to comply with this Regulation shall be grounds for removing a Commissioner from the Board that hears the complaint.
 7. Function. The Board of Inquiry shall review the confidential Investigative Report and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and shall advise the Chief of Police and the City Manager of its conclusions and recommendations. The Board shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding the dismissed citations.
 8. Continuances
 - a. The PRC recognizes the need of all interested parties to have complaints heard as expeditiously as possible after full investigation has taken place. Therefore, requests for continuances will not be granted in the absence of good cause.
 - b. A majority of the Board of Inquiry has the discretion to grant a continuance and will consider any such requests during closed session. Such requests shall be presented to the PRC as soon as the cause for continuance arises. In considering whether to grant such a continuance the Board of Inquiry members shall consider the reason offered for the continuance; the timeliness of the request; the prejudice to the complainant and subject officer; the date of the filing of the complaint; whether previous requests for continuance have been made; and other relevant information.

- d. A request for continuance made within three (3) days of the hearing date will not be granted unless the moving party can demonstrate grave emergency which will unduly prejudice him or her if the hearing is not continued.
- e. Any continuance requested by the Subject Officer shall toll any BPD disciplinary time period.

9. Presence at Closed Hearing

- a. All Board of Inquiry hearings shall be closed to the public. The Subject Officer(s), the officer's representative, PRC staff, Commissioners and a BPD Departmental Representative shall be present during the closed hearing.
- b. Each Subject Officer, the Departmental Representative, , the officer's representative and the PRC staff shall be present and shall testify in a closed hearing as required by the City Manager's policy (see Exhibit B) unless otherwise directed by the City Manager. The Complainant and witnesses shall be excluded, except when testifying. The Departmental Representative and the Commission's Investigator shall be present and shall answer appropriate questions addressed to them.

No person who is present at a Board of Inquiry or Mediation session shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD members shall be excused without prejudice. The burden shall be upon the BPD member to establish to the satisfaction of the City Manager that his or her reasons for leaving were sufficient.

- c. In the absence of good cause, failure of the Complainant to appear within thirty (30) minutes after the scheduled time for the hearing shall result in the complaint being dismissed against the Subject Officer.
- d. The unavailability of the BPD member witness, a Complainant's witness, or other witnesses or the representative of a party, may, if good cause is shown to the Board of Inquiry, be grounds to continue the hearing.

10. Counsel at Hearing. An attorney or other person acting on behalf of any Subject Officer may participate in the hearing, but such representative shall not be required. However, the subject officer(s) is responsible for insuring the presence of his/her counsel at the hearing and the failure of counsel to appear at the hearing without good cause will not delay the hearing or result in continuance.

11. Scheduling. The Chief of Police, or his designee, shall provide the PRC with a Subject Officer's schedule prior to the scheduling of a hearing, which shall not be held on regular days off, scheduled vacation, or authorized leave of absence.

12. Subpoena Power. The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.
13. Summary Dismissal. The Police Review Commission, or its designee, after reviewing the investigative packet, may summarily dismiss any or all of the allegations in a complaint, which it finds clearly without merit, by unanimous vote, on the recommendation of the Investigator, its own motion, or that of the Subject Officer. Parties to the complaint shall be notified of the summary hearing, and may appear to argue for or against summary disposition.
14. Summary Affirmance. After reviewing the investigative packet, the Board may summarily sustain any or all of the allegations in a complaint, which it finds clearly meritorious, by unanimous vote, on the recommendation of the Investigator, or its own motion. Summary affirmance will not occur over the objection of the Subject Officer, who shall be notified of the summary hearing, and may appear to make a timely objection in writing.
15. Deliberation. After obtaining evidence, the Board will deliberate outside the presence of the subject officer (s) involved in the complaint. The Board shall not consider any information not received as part of the hearing. The Board may reconvene in the presence of the subject officer(s) to ask further questions, and the subject officer(s) shall have the opportunity to respond to any such questions.
16. Hearing Procedure. The hearing need not be conducted according to technical rules relating to evidence and witnesses. 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, regardless of the existence of any common law or statutory rule, which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection on civil actions. "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

Evidence shall be taken in accordance with the following provisions:

- a. The subject officer(s) shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of who first called him or her to testify; and to rebut the evidence against him or her. If the Subject Officer does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.
- b. Oral evidence shall be taken only under oath.
- c. All witnesses shall be excluded from the closed hearing until they are called to testify.

- d. Irrelevant and unduly repetitious evidence shall be excluded.
 - e. The Chairperson shall exclude unruly or disruptive persons from the hearing.
 - f. The Chairperson will conduct the hearing subject to being overruled by a majority of the Board members. Members of the Board shall be primarily responsible for obtaining testimony. The Investigator will answer Commissioner's questions on the evidence, points of law, and procedure.
 - g. 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.
 - h. The hearing will proceed as follows: The PRC Staff will present the complaint, and introduce witnesses, if any. The complainant and the complainant's witness may be questioned by the Board and by the Subject officer or his/her representative. The Subject officer shall then respond to the complaint, and introduce witnesses, if any. The questioning of the subject officer shall be limited to no more than two Commissioners.
 - i. If the Board considers that additional evidence is necessary 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.
 - j. 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.
17. Majority Vote. All action by the Board shall be by majority vote, except as specified in these procedures. A dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.
18. Standard of Proof. No complaint shall be sustained unless it is proven by clear and convincing 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.
19. Categories of Findings
- a. If the investigation shows the alleged act did not occur, the finding shall be "Unfounded."

- b. If the investigation fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained."
- c. If the investigation shows the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated."
- d. If the investigation shows the allegation did occur and the action is not justified, the finding shall be "Sustained."

20. Report of Board Findings and Notification

- a. Within thirty (30) calendar days of the hearing of the complaint, the Board shall submit written findings to the PRC Officer. The Board's findings are confidential, except that the Complainant and subject officer shall receive written notice whether the allegation was sustained, not sustained, unfounded or exonerated and shall include notice of the right to petition for rehearing.
- b. Policy recommendations by Boards shall be presented to the full Commission for confirmation before being sent to the Chief of Police and City Manager.

21. Petition for Rehearing. Within fifteen (15) calendar days of the mailing of the findings of the Board, any party to the complaint may petition in writing, with grounds set forth, for a rehearing. Such rehearing may be granted by the PRC, if it is shown that there is newly discovered evidence, material for the party making the application, which could not have been with reasonable diligence, discovered and produced at the hearing; or if it is shown that there was substantial procedural error likely to have affected the outcome. In a petition for rehearing of a case summarily dismissed by the designee of the Commission an additional ground for rehearing shall be a clear error in the application of the standard set forth in sub-section 13.

Upon receipt of a petition for rehearing by either party, a decision shall be made within twenty-one (21) calendar days as to whether to grant or deny it. When a rehearing is granted, it shall be held within thirty-five (35) calendar days of the receipt of the petition. The 120-day discipline period shall be tolled until the petition is either denied or rehearing concluded.

22. Circulation of Findings. The Commission shall routinely send copies of its confidential findings together with the investigative packet to the City Manager and Chief of Police.

23. Amendment of Complaint Procedure

- a. Amendments shall be numbered sequentially and dated, and shall indicate where they are to be placed in the procedure (i.e., "supersedes Section 29," or "read between Section 29 and Section 30").

The PRC office shall maintain a complete current set of Complaint Procedures.

- b. Amendments shall be distributed to Commissioners, the Berkeley Police Association, City Manager, City Attorney, and Chief of Police.

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Appendix C

COMPLAINT FORM



COMPLAINT FORM

Police Review Commission

1947 Center Street, 3rd Floor, Berkeley, CA 94704

<http://www.ci.berkeley.ca.us/prc>

email: prc@ci.berkeley.ca.us

(510) 981-4950 TDD (510) 981-6903 Fax: (510) 981-4955

Received by: _____

PRC CASE #: _____

(black ink preferred)

1.

Name of Complainant: _____
last first middle

Sex: _____ Age: _____ Date of Birth: _____ Ethnicity/Race: _____

Home Address: _____
street city state zip

Work Address: _____ Occupation: _____

Home Phone: (____) _____ Work Phone: (____) _____

Alternate address: _____ Phone: (____) _____

Please note: Complainants must advise the PRC of any changes of address or phone; failure to provide the PRC current information or means for PRC to contact the complainant may result in dismissal of the case.

2.

Location of Incident: _____

Day, Date & Time of Incident: _____

Complaints must be filed within 90 days of the time you became aware of the incident. The Commission may extend this time limit another 90 days; however, officers may not participate in the process in late-filed cases.

Please describe any injuries suffered. _____

Where and by whom were the injuries treated? _____

Were photos taken of the injuries & by whom? _____

Did anyone videotape the incident? _____ If you intend to submit the videotape as evidence, a copy of the videotape should be provided at the time of filing this complaint. If unable to submit at time of filing, alternative arrangements for timely submission of the videotape must be made with the PRC investigator.

Were you arrested? _____ Criminal Charges Pending? _____ BPD Report/Citation #: _____

Please note: If you have criminal charges pending, you should consult an attorney before filing your PRC complaint.

3.

SUBJECT OFFICER INFORMATION				(FOR OFFICE USE ONLY)	
Badge #	Name	Sex	Race	Allegation	Disposition

4.

5

Please provide a factual description of the incident that forms the basis of your complaint. Your statement will be used by the PRC to form its allegations against the officer(s) and to determine whether the facts as you have described them reflect that the officer engaged in misconduct. It is therefore important that you include a detailed factual description of the events of which you complain (use additional pages if necessary):

Multiple horizontal lines for writing a detailed description of the incident.

6

MEDIATION ALTERNATIVE: Your case will be reviewed to determine if it is appropriate for mediation. Would you consider mediation as a means of resolving your complaint? Yes No

7

Date incident reported to other Berkeley departments: Berkeley PD: _____ City Manager: _____
Mayor: _____ City Councilmember: _____ Other: _____

8

I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my verbal testimony before a Board of Inquiry shall be given under oath.

Signature of Complainant Date signed

Please note: A PRC investigator must interview the complainant before the case can be scheduled for a hearing. A complainant's failure to provide an interview may result in dismissal of the case. The Berkeley Police Review Commission is a public agency. However, the files are confidential records. **Revised: 5/30/2008**

Appendix D

PRC ALLEGATIONS

ALLEGATION CATEGORIES, CODES AND ABBREVIATIONS

Categories

Abbreviations

IMPROPER USE OF FORCE

EXF

All allegations concerning the unnecessary use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including:

Improper Use of Firearm	iuf
Unnecessary Display of Weapon (As defined in Police Regulation 200)	udw
Improper Physical Contact (As defined in Police Regulation 318 or 321)	ipc
Improper Use of Handcuffs	ih
Improper Use of Baton	iub
Improper Use of Mace or Pepper Spray	ium
Improper Use of Flashlight	ifl

DISCOURTESY

DIS

All allegations concerning a failure to be courteous and civil to the public. All employees are expected to be quiet, orderly, attentive, and respectful and to exercise patience and discretion in the performance of their duties. (PR. 239) Complaints may include improper hand gestures or signs and/or the failure of an employee to give a proper response or explanation to a citizen.

Discourtesy	dis
Abusive or Obscene Language	aol
Failure to Give Proper Explanation to Citizen	fge
Failure to Provide Information	fpi
Failure to Respond	fr
Misrepresentation of Vehicle Code	mvc
Threat	tht

IMPROPER ARREST, SEARCH, SEIZURE, STOP OR DETENTION ASD

All allegations concerning police actions conducted without sufficient lawful reason, particularly as they relate to improper stops, street detentions, searches, seizure and arrests. This category does not include complaints about improperly issued traffic citations or improper police tows. (May be based upon proper police conduct defined in Police Regulation 401).

Improper Arrest	far
Improper Search	isr
Improper Seizure	isz
Improper Stop	ist
Improper Detention	idt

IMPROPER DETENTION PROCEDURES DET

All allegations concerning a failure to follow proper procedures for arrest, booking, incarceration and release of prisoners. May include allegations concerning a failure to advise of the reasons for an arrest; failure to "Mirandize" a suspect; failure to utilize the proper citation release procedure; a failure to follow proper bail procedures; failure to allow phone calls and/or access to attorneys, and unnecessary delays in releasing prisoners.

(May be defined in reference to Police Regulations 400, 401, 211, 212, 213, 201, 202, 203, 204, 205, 206, 207 and General Orders.

Failure to Inform of Grounds of Arrest	fga
Failure to Provide Notice of Intent to Cite or Arrest	fpn
Failure to Provide Medical Assistance	fpm
Failure to Read Miranda Rights	frr
Improper Bail Procedure	ibp

INADEQUATE OR IMPROPER INVESTIGATION

INV

All allegations concerning a failure to adequately and impartially investigate and to accurately provide a written account of an incident. May include the failure of an employee to take a report or to make a lawful arrest. (May be defined in Police Regulation 276 and 401, General Order R-24.4 and appropriate Penal Code Sections).

Failure to Investigate	fti
Failure to Make Police Report	fmr
False Police Report	fpr
Improper Police Report	ipr

DISCRIMINATION

PRJ

All allegations concerning a favorable or unfavorable treatment of action by a police employee which exhibits partiality or prejudice based upon a person's race, sex, religion, political persuasion or appearance. (May be defined in Police Regulation 237, 239, 240 and 401)

Racial Discrimination	rac
Sexual Discrimination	sex
Religious Discrimination	rel
Political Discrimination	pld
Discrimination by Appearance	app
Discrimination by Sexual Orientation	sxd
Selective Enforcement	sef

HARASSMENT

HAR

Any allegation asserting a consistent, deliberate annoyance by police employees where the complainant can attest to repetitious contact over a period of time. (May be defined in Police Regulation 257)

Harassment	har
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IMPROPER POLICE PROCEDURES**PRO**

Any allegation concerning a failure to follow approved Departmental policies, procedures, orders or guidelines. (May be defined in official Police Training Bulletins, Captain's instructions, Police Regulations or General Orders).

Damage to Property	dam
Failure to Arrest	fta
Failure to Honor Citizen's Arrest	fca
Improper Confiscation of Property	icp
Failure to Return Property	frp
Improper Police Dispatch	ipd
Interference with Taking of Evidence	ite
No Badge Visible	nbv
Making False Statements	mfs

IMPROPER CITATION OR TOW**CIT**

All allegations of improperly issued traffic citations or improper towing by a police employee. (May be defined by the California Vehicle Code or local ordinance).

Improper Citation	ict
Improper Tow Tag	irt
Improper Tow	itw

OTHER**OTH**

All other allegations concerning police employee misconduct that do not fit into any of the other listed categories. These allegations may include, but are not limited to complaints concerning criminal misconduct, abuse of discretion, or failure of a police employee to properly identify self.

Abuse of Discretion	ads
Breach of Confidentiality	boc
Failure to Identify Oneself	fti
Lack of Discretion	lod

Appendix E

COMMISSION MEETING SCHEDULE

2009 Commission Meeting Dates

Month	Meeting Day and Date	Time
January	1/14/09	7:00 pm
	1/28/09	7:00 pm
February	2/11/09	7:00 pm
	2/25/09	7:00 pm
March	3/11/09	7:00 pm
	3/25/09	7:00 pm
April	Tuesday 4/7/09	7:00 pm
	4/22/09	7:00 pm
May	5/13/09	7:00 pm
	5/27/09	7:00 pm
June	6/10/09	7:00 pm
	6/24/09	7:00 pm
July	7/8/09	7:00 pm
	7/22/09	7:00 pm
August	No Meetings	
September	9/2/09	7:00 pm
	9/23/09	7:00 pm
October	10/14/09	7:00 pm
	10/28/09	7:00 pm
November	11/18/09	7:00 pm
December	12/9/09	7:00 pm

Meetings occur on the 2nd and 4th Wednesdays of the month.

The City Council and the PRC takes a break in August.