

CITY OF BERKELEY



POLICE REVIEW COMMISSION STATISTICAL REPORT 2009

CITY OF BERKELEY
POLICE REVIEW COMMISSION
2009

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Sherry Smith, Chair
George Perezvelez, Vice-Chair

Russell Bloom
Kamau Edwards
Vonnie Gurgin
Jonathan Huang
Michael Sherman
William White
Sharon Anne Kidd (2009-10)

MAYOR

Tom Bates

COUNCIL MEMBERS

Linda Maio (District 1)
Darryl Moore (District 2)
Maxwell Anderson (District 3)
Jesse Arreguin (District 4)
Laurie Capitelli (District 5)
Susan Wengraf (District 6)
Kriss Worthington (District 7)
Gordon Wozniak (District 8)

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INTRODUCTION

We are pleased to present our 2009 annual report of the Police Review Commission to the community of Berkeley. We hope that this report and its statistical data serves the community in understanding the nature of complaints, hearing resolution and policy changes, as well as the work of the Police Review Commission and the performance of the Berkeley Police Department.

This year has seen a lot of changes to our internal process and police department policies. Extensive work was performed by the Commissioners who, in addition to attending regular Commission meetings, heard cases initiated by civilian complaints and served on several subcommittees. A year long process culminated in the final implementation of our new regulations, which were essential in order to bring new clarity to the parameters in which we operate as well as comply with decisions by the California Courts that changed our hearing process.

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 and it is through your continued engagement that this Commission moves forward and affects responsible, effective and community oriented policing.

On behalf of the Police Review Commission, I want to express our appreciation for excellent staff work in the performance of their duties. Staff takes great care to assure that complaints are handled properly and that all citizens' concerns arising from interactions with police personnel are paid heed. It is their efforts that make the work of the Commissioners an intrinsic part of the oversight process as we endeavor to serve the City and its citizens well.

Respectfully,
George D. Perezvelez
2010 Chair
Police Review Commission



Police Review Commission

November 22, 2010

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 2009. The purpose of the report is to provide statistical data on complaint numbers, kind and status.

The Commission received 30 new complaints, closed 38 cases and conducted 10 Boards of Inquiry. The Commission reviewed police policies on Officer-Involved Shootings, Search of Homes, Crowd Control, Authority – Limits and Discretionary Use, Mutual Aid Pacts and revised the Regulations.

I am grateful to the PRC staff, because the work could not get done without their commitment and dedication. I appreciate the Berkeley Police Department's willingness in working with the Commission on policy recommendations and their assistance with the PRC's investigations. Additionally, I wish to thank the City Manager staff for their guidance on reviewing this report and the City Attorney's office for their continued legal advice on PRC matters.

This year, the Statistical Report was delayed, because I was out on maternity leave for three and a half months. Upon my return, we were short-staffed for several months due to staff's family emergency and jury duty.

While the Statistical Report highlights the complaint data, it does not accurately reflect the persistent effort, tireless energy and countless hours that each Commissioner and staff have dedicated to helping make the Berkeley Police Department the best it can be.

Respectfully submitted,

Victoria A. Urbi
Police Review Commission Officer

2009 PRC STATISTICAL REPORT

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I. EXECUTIVE SUMMARY

COMPLAINTS

In 2009, the Police Review Commission (PRC) received 30 new complaints.

The PRC received 142 allegations. The majority of the allegations were regarding improper arrest, search, stop or detention; improper force and discourtesy.

The Commission resolved 38 complaints.

COMPLAINANTS

There were a total of 32 complainants in 2009: 18 complainants were African American, 7 were Caucasian, 4 of unknown race, 2 Latino, and 1 multi-racial.

INVESTIGATION TIME

The average time to investigate a complaint took 6 months and the average time to close a case was 10 months.

PRC staff interviewed a total of 56 police officers and witnesses.

BOARDS OF INQUIRY

The Commission held 10 boards of inquiry and sustained 14 allegations.

The most common allegations sustained were improper search, improper police procedures and discourtesy.

The Commission sustained 18% of the allegations and did not sustain, exonerated, or unfounded 82% of the allegations.

CALOCA OFFICER APPEALS

After a board of inquiry hearing, subject officers may appeal the sustained findings to an administrative law judge. In 2009, PRC did not have a *Caloca* appeal hearing.

MEETINGS

The Commission had 55 meetings and other Commission-related activities or an average of 4.6 activities per month.

POLICY SUBCOMMITTEES

The Commission reviewed policies on Officer-Involved Shootings, Search of Homes, Mutual Aid Pacts, Crowd Control, Regulations and Authority – Limits and Discretionary Use.

OUTREACH

The Commission assisted the BART Police Department Review Committee in reviewing various civilian oversight models and providing expertise in creating a civilian oversight agency.

The staff worked with U.C. Berkeley's Cal in Local Government to provide internship opportunities and mentored students on civilian oversight of police.



II. MISSION STATEMENT

The Police Review Commission's mission 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.

III. 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.



Top (L-R): Commissioners William White, Russell Bloom, Kamau Edwards and Jonathan Huang.
Bottom: Commissioners Kiran Shenoy (appointed in 2010), Sherry Smith, George Perezvelez, Vonnie Gurgin and Michael Sherman.

**Chairperson (2009) 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, and is President of the League of Women Voters and an attorney in private practice working with nonprofits and civic groups. Commissioner Smith served as the Chairperson (2008-2009) and on the Subcommittees of Evidence Theft and Officer-Involved Shooting.

Vice Chairperson George David Perezvelez

Appointed by Mayor Bates, Commissioner Perezvelez has served on the PRC since October 10, 2007. He is a Restaurant Operations General Manager in the Bay Area and a former Naval Officer. He serves on the Berkeley Commission on Labor. He is an active member of the Human Rights Campaign, American Civil Liberties Union, The National Council of La Raza and Project Open Hand. His involvement in the Lesbian, Gay, Bisexual and Transgender and diverse communities is paramount to his work. He has served on the Officer-Involved Shooting Subcommittee and the Regulations Review and Ordinance Subcommittees.

Commissioner Russell G. Bloom

Appointed by Councilmember Maio, Commissioner Bloom has served since December 1, 2008 and was elected Vice-Chair of the PRC in 2010. Commissioner Bloom is a graduate of the New College of California School of Law and works in Oakland as an Investigator for a private law firm specializing in Asbestos Litigation.

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 California Department of Transportation and serves on the Officer-Involved Shootings and Search of Homes Subcommittees.

Commissioner Vonnie Gurgin

Appointed by Councilmember Wengraf, Commissioner Gurgin has served since December 18, 2008. Commissioner Gurgin is a retired Research Scientist and taught Research Methodology in the School of Criminology at U.C. Berkeley. She has more than forty years of research experience in fields ranging from Criminal Justice including Drug Abuse Prevention Research to Cancer Epidemiology. She currently serves on the Improper Search of Homes and Ordinance Subcommittees.

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 Search of Homes Subcommittee.



Commissioners at the Annual Holiday Party, 2009

Commissioner Sharon Anne Kidd

Appointed by Councilmember Moore, Commissioner Kidd served on the PRC from January 5, 2005 – May 3, 2010. Commissioner Kidd works for the Social Security Administration as a Debt Specialist. She is the President of the African American Advisory Committee on Crime for the City of Oakland and works as the 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 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 primary school teacher and is currently retired. He served on the Criminal Intelligence and Crowd Control Subcommittees, and served on the Regulations Review Subcommittee.

Commissioner William White

Appointed by Councilmember Wozniak, Commissioner White has served on the PRC since August 6, 1997. Commissioner White is an Accountant for the Mills College Alumni Association. As the longest standing Commissioner, he 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 Search of Homes Subcommittee. Prior to serving the PRC, he served on the Cable TV and Personnel Commissions for the City of Berkeley.



IV. STAFF



Top (L-R): Maritza Martinez, Mary Matambanadzo, Byron Norris and Victoria Urbi.

Victoria Urbi, PRC Officer

Byron Norris, Investigator

Maritza Martinez, Office Specialist III

Mary Matambanadzo, Office Specialist II

2008-09 Interns

Vanessa Dougherty, Nancy Perez

2009-10 Interns

Catherine Choe, Mona Fang

The Police Review Commission Officer reports to the City Manager, assists the Commission in its functions and advises the Commission with recommendations.



V. 2009 COMPLAINT STATISTICS

1. CASES OPENED

	DATE FILED	CASE # COMP.	Total Allegations	Subject Officers	Total Interviews	Investigation Time	Total Time Case Closed	Disposition
1	1/2	2223	7	4	6	3 mos.	6 mos.	Hearing
2	1/8	2224	5	2	9	9 mos.	10 mos.	Hearing
3	2/10	2225	2	1	3	2 mos.	11 mos.	Admin. Close 2010
4	2/27	2226	3	4	6	10 mos.	14 mos.	Admin. Close 2010
5	3/6	2227	2	1	1	7 mos.	7 mos.	Summ. Dism.
6	4/17	2228	4	2	4	1 mo.	2 mos.	Hearing
7	4/28	2229	2	1	0	5 mos.	6 mos.	Admin. Close
8	5/20	2230	5	1	2	3 mos.	8 mos.	Admin. Close 2010
9	6/10	2231	5	2	4	6 mos.	7 mos.	Hearing 2010
10	6/3	2232	2	1	2	7 mos.	10 mos.	Admin. Close 2010
11	7/8	2233	4	3	4	6 mos.	9 mos.	Hearing 2010
12	9/23	2234	1	1	2	5 mos.	6 mos.	Summ. Dism. 2010
13	8/4	2235	N/A	N/A	N/A	N/A	N/A	No Jurisdiction
14	9/2	2236	3	2	1	2 mos.	4 mos.	Sum. Dism. 2010
15	9/2	2237	2	1	2	4 mos.	7 mos.	Admin. Close 2010
16	9/15	2238	N/A	N/A	N/A	N/A	N/A	Complaint Withdrew
17	9/17	2239	6	1	5	3 mos.	4 mos.	Hearing 2010
18	9/21	2240	N/A	N/A	N/A	N/A	N/A	Late File Rejected
19	9/21	2241	3	1	2	1 mo.	2 mos.	Summ. Dism.
20	9/29	2242	3	1	3	3 mos.	6 mos.	Hearing 2010
21	10/1	2243	5	1	2	Pending	Pending	
22	10/14	2244	4	2	3	7 mos.	9 mos.	Hearing 2010
23	10/5	2245	5	5	5	3 mos.	6 mos.	Hearing 2010
24	10/16	2246	1	Policy Issue	1	N/A	N/A	Policy Withdrew
25	10/26	2247	4	1	2	2 mos.	5 mos.	Admin. Close 2010
26	11/6	2248	4	3	5	2 mos.	5 mos.	Admin. Close 2010
27	11/23	2249	3	1	2	7 mos.	8 mos.	Hearing 2010
28	11/24	2250	3		4	Pending	Pending	
29	12/17	2251	3		3	3 mos.	10 mos.	Admin. Close 2010
30	12/28	2252	4	1	4	3 mos.	9 mos.	Admin. Close 2010

Total Complaints: 30
 Total Complainants: 32
 Total Policy Complaints: 1

Note: 2 Complaints had 2 Complainants.



This chart summarizes how cases progressed through the investigation process. In 2009, 30 complaints were filed with 32 complainants, because 2 complaints involved co-complainants. Of those 30 cases, 9 were closed in 2009. By October of 2010, an additional 19 cases were closed with 2 remaining pending. 15 out of the 30 cases were closed without a sustained allegation, the complainant did not cooperate with the investigation or there was no merit to the complaint. This shows that half of the complaints filed were closed without a hearing.

The chart also shows that on average, the PRC received 1-2 complaints per month. Beginning in September, the number of complaints increased to 8 complaints filed in September, 5 complaints filed in October and 3 complaints filed in November.

2. BOARDS OF INQUIRY

Date	NAME/ CASE #	Commissioners	Hearing Cancelled	Hearing Held	Allegations	Sustained Allegations
Jan. 21	Lockett 2154	Sherman, Perezvelez, White	Rescheduled, Unavailability of Officers		See Jun. 8 below	N/A – Hearing cancelled
Mar. 17	Lockett 2154	Sherman Perezvelez, White	Rescheduled, Unavailability of Officer(s)		See Jun. 8 below	N/A – Hearing cancelled
Apr. 13	Gay 2188	Smith, Perezvelez, Bloom, Gurgin, Huang, Kidd, Sherman, White		X	-Improper Use of Force -Abuse of Discretion -Discourtesy	Discourtesy
May 6	Davis 2203	Gurgin, Huang White	Complainant no-show		-Improper Detention	None
May 11	Thomas 2223	Kidd, Gurgin Sherman	Rescheduled Unavailability of Officer(s)		See Jun. 1 below	N/A – Hearing cancelled
Jun. 1	Thomas 2223	Kidd, Gurgin, Smith		X	-Inadequate Investigation -Improper Search -Improper Use of Force -Discrimination -Discourtesy	Discourtesy
Jun. 8	Lockett 2154	Edwards Perezvelez, Sherman		X	-Improper Police Procedures -Harassment -Discrimination -Improper Investigation	None



2. BOARDS OF INQUIRY (CONTINUED)

Date	NAME/ CASE #	Commissioners	Hearing Cancelled	Hearing Held	Allegations	Sustained Allegations
Jun. 15	Fisher 2228	Bloom, Huang, Kidd		X	-Inadequate Investigation -Discrimination -Improper Use of Force -Abuse of Discretion	Inadequate Investigation
Jun. 18	Beamon 2196	Kidd, Perezvelez Sherman	Rescheduled, Unavailability of Officer(s)		See Jul. 21 below	N/A – Hearing cancelled
Jun. 22	McGee 2204	Bloom, Smith White		X	-Discourtesy	None
Jul. 21	Beamon 2196	Bloom, Huang White		X	-Improper Use of Force -Improper Search -Improper Police Procedures -Lack of Discretion	Improper Police Procedures
Jul. 29	McClain 2209	Bloom, Edwards Perezvelez		X	-Discourtesy -Improper Search -Improper Police Procedures	-Improper Search -Improper Police Procedures
Sep. 29	Weiss 2162	Kidd, Sherman Smith		X	-Improper Use of Force -Improper Detention -Harassment -Inadequate Investigation -Discourtesy	None
Nov. 10	Key 2224	Edwards, Gurgin Kidd		X	-Improper Police Procedures -Improper Search -Improper Use of Force -Discourtesy	None
Dec. 16	Horncliff 2239	Edwards, Huang White	Rescheduled Jan. 2010, unavailability of officer(s)		-Improper Use of Force -Improper Arrest -Discourtesy -Threat -Abuse of Authority -Inadequate Investigation	N/A – Hearing cancelled
Dec. 23	Bronson 2231	Bloom, Gurgin Perezvelez		X	-Improper Detention -Improper Search -Discourtesy -Improper Police Procedures -Discrimination	-Improper Detention -Improper Search -Discourtesy -Improper Police Procedures



This chart shows the Commission held 10 boards of inquiry in 2009. The Commission held the most boards of inquiry in June with a total of 4 hearings or 1 hearing each week. Additionally, the chart outlines the allegations that were sustained. In the majority of the hearings, the board sustained only 1 allegation at each hearing. In 4 out of the 10 hearings, the board did not sustain any allegations. The most common allegations that were sustained include improper search, discourtesy and police procedures.

3. TOTAL INVESTIGATION TIME

This chart shows only cases that closed in 2009. Several cases that closed in 2009 were not opened in 2009, because of either the timing in investigating the complaint or because the case was tolled if the complaint was the subject of a criminal prosecution. On average, the investigation time took approximately 6 months to complete. Closure of cases were determined by when the Commission accepted a recommendation for closure or when a Findings Report is sent to the City Manager and Chief of Police.

Investigation Time	6 months
Closure of a Case	10 months

4. TOTAL CASES CLOSED BY YEAR CASE OPENED

Year Case Opened	Total Cases Closed in 2009
2009	9
2008	25
2007	4
Total Cases Closed	38

This chart shows that 38 cases were closed in 2009, but the majority of those cases (25 cases) were opened in 2008. Only 9 cases that opened in 2009 also closed in 2009. The 4 cases that opened in 2007 and closed in 2009 were likely delayed, because a criminal matter was pending, which would toll the one year statutory deadline.



VI. STATISTICAL COMPARISONS

1. CASES OPENED BY YEAR

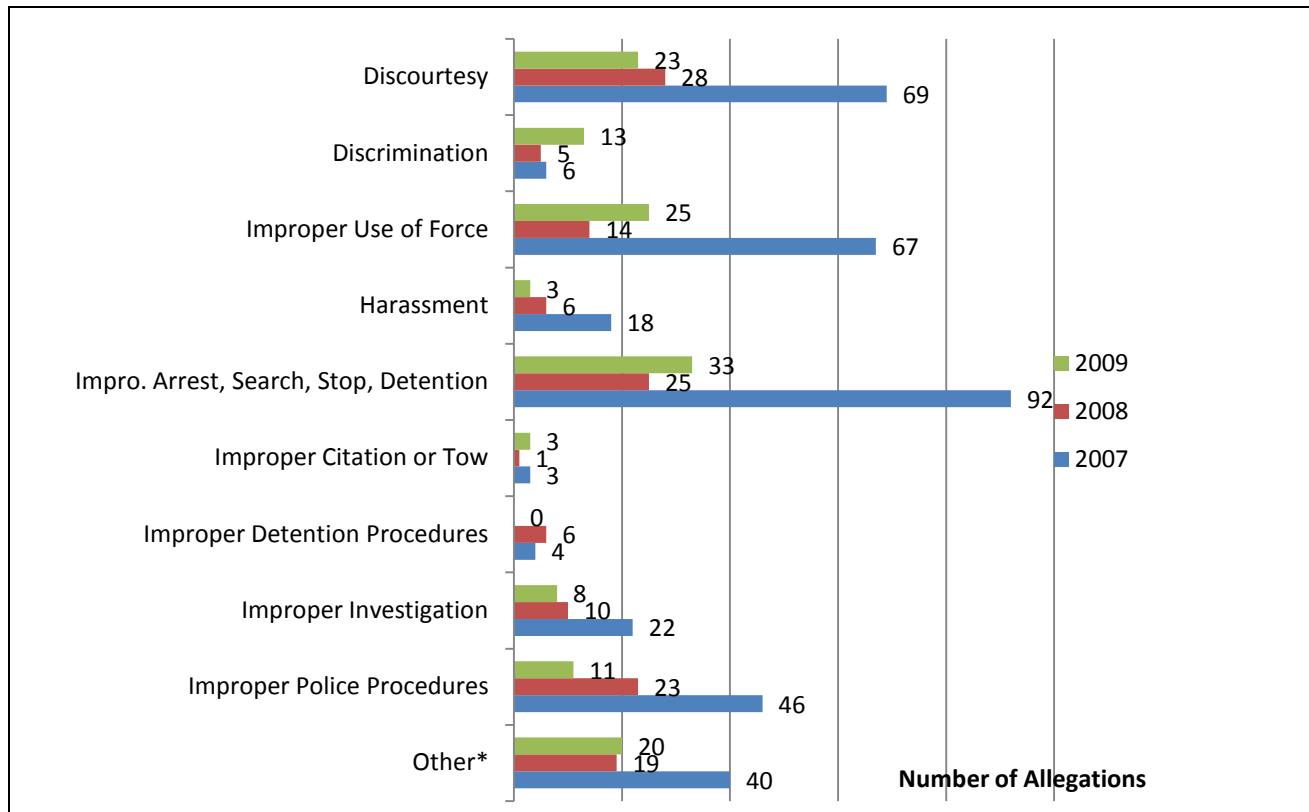
YEAR	TOTAL CASES OPENED
2009	30
2008	42
2007	41

In 2009, the number of complaints received declined to 30. In 2007 and 2008, the number remained virtually the same with 41 and 42 complaints received, respectively. The 2009 statistic is similar to 2006 when 34 complaints were received. This shows that the total number of complaints filed each year tends to fluctuate.

When reviewing the number of complaints filed, it is important to consider the number of contacts Berkeley police have with people on a daily basis. In a given year, the police may have close to 100,000 contacts with the public. This number includes calls for service through 911, traffic stops, street detentions and more. Given the number of total police contacts in 2009, the PRC received 30 new complaints. This number shows that the total number of complaints is low when viewing the complaints within the context of total police contacts. Nevertheless, each complaint filed is taken seriously and investigated thoroughly.



2. ALLEGATIONS RECEIVED BY YEAR



The allegations with the highest numbers include: Improper Arrest, Search, Stop or Detention with 33 allegations, Force with 25 allegations and Discourtesy with 23 allegations. The number of discourtesy allegations decreased: in 2008, there were 28 allegations and in 2009, there were 23 allegations. The discrimination allegation increased from 5 in 2008 to 13 in 2009. Also, the number of force allegations was 14 in 2008 and increased to 25 in 2009. Of the total 142 allegations filed in 2009, 130 remained after investigation by staff. Of those 130 allegations, 43 were administratively closed or summarily dismissed, leaving 87 allegations to be considered by the Commission. (See Table 4 below for the number of allegations sustained in 2009.)

One notable trend is the drop in complaints against the Special Enforcement Unit and the Drug Task Force alleging “Improper Search” of a home. In 2007, the PRC received three complaints and in 2008, the PRC received four complaints alleging “Improper Search” of homes, which all had similar fact patterns. Parents or family members of suspects with search clauses complained about their homes being search.

Consequently, the Commission created the “Search of Homes Subcommittee” to review BPD policies and procedures for searching homes, particularly parole searches involving third parties. In 2009, PRC received only two complaints alleging “Improper Search” of homes and neither these complaints resulted in a sustained allegation.



The numbers for 2007 reflect higher numbers, because the PRC changed how allegations were counted. In 2007, allegations were counted by adding allegations with each subject officer. After 2007, the PRC began counting allegations without including each subject officer. This resulted in lower number of allegations in 2008 and 2009.

3. TOTAL ALLEGATIONS BY YEAR

ALLEGATIONS	2009	2008	2007
Allegations received when complaint filed:	142	141	354
Allegations after an investigation:	130	137	348
Total Difference:	12 allegations deleted	4 allegations deleted	6 allegations deleted

Out of the 30 complaints received, the Commission received 142 allegations. After an investigation has been completed, some allegations are deleted if allegations are repetitive or there is no issue in dispute. After staff completed the investigation, 130 allegations remained. Out of the 130 allegations, 43 were administratively closed or summarily dismissed leaving 87 to be considered by the Commission.

The number of allegations received was virtually the same in 2009 and in 2008. The number of allegations that were deleted after an investigation has been completed increased in 2009 to 12 allegations.

4. BOARD OF INQUIRY FINDINGS

FINDINGS	2009	2008	2007
Allegations Sustained	14	9	0
Allegations Not Sustained	9	20	0
Allegations Exonerated	39	20	0
Allegations Unfounded	17	9	0
Total Allegations	79	58	0



In order to sustain an allegation, the board uses a “clear and convincing standard,” which means that the board must find evidence that is more than a preponderance of the evidence, but less than beyond a reasonable doubt. The sustained factual finding shows that the alleged act did occur and the action was not justified.

When reviewing allegations considered at boards of inquiry, in 2009, 18% of the allegations were sustained and 82% of the allegations were not sustained, exonerated or unfounded. These percentages are similar to 2008 where 16% of the allegations were sustained and 84% were not sustained, exonerated or unfounded.

The 2007 data is zero, because the Commission did not conduct any boards of inquiry due to pending litigation.

5. CASE DISPOSITION

REASON CASE CLOSED	2009	2008	2007
Board of Inquiry	10	7	0
Summary Dismissal	8	11	0
Administrative Closure - 1-Year Expiration	19	65	0
*Policy Cases Closed	0	1	0
Late File Rejected	1	2	3
Total Cases Closed	38	86	3



*NOTE: There are 2 types of policy cases. A complainant may file a policy complaint if there is a Berkeley Police Department policy that should either be adopted or amended. The Commission will review complainant-initiated policy complaints at the Commission meetings and determine whether to accept it. The policy cases listed in the "Case Disposition" chart refers only to complainant-initiated policy complaints.

The Commission may also initiate its own review of a police policy. For example, the Commission initiated the Search of Homes Subcommittee and the Officer-Involved Shooting Subcommittee. For a complete list of Policy Subcommittees, please see page 19.

In 2009, the Commission held more hearings than prior years and recommended 27 cases for closure. Cases are recommended for summary dismissal when there is no merit to a complaint. There were less summary dismissals in 2009 than in 2008.

Cases are recommended for administrative closure when the complainant does not cooperate with the investigation, the complaint is moot, or some other administrative matter that is not related to the merits of the complaint. In 2009, there were less administrative closures than 2008, because several cases expired in 2008 due to Government Code §3304, which states that an investigation must be completed within a year. This resulted from 2007 when PRC postponed all hearings due to pending litigation.

6. PENDING CASES

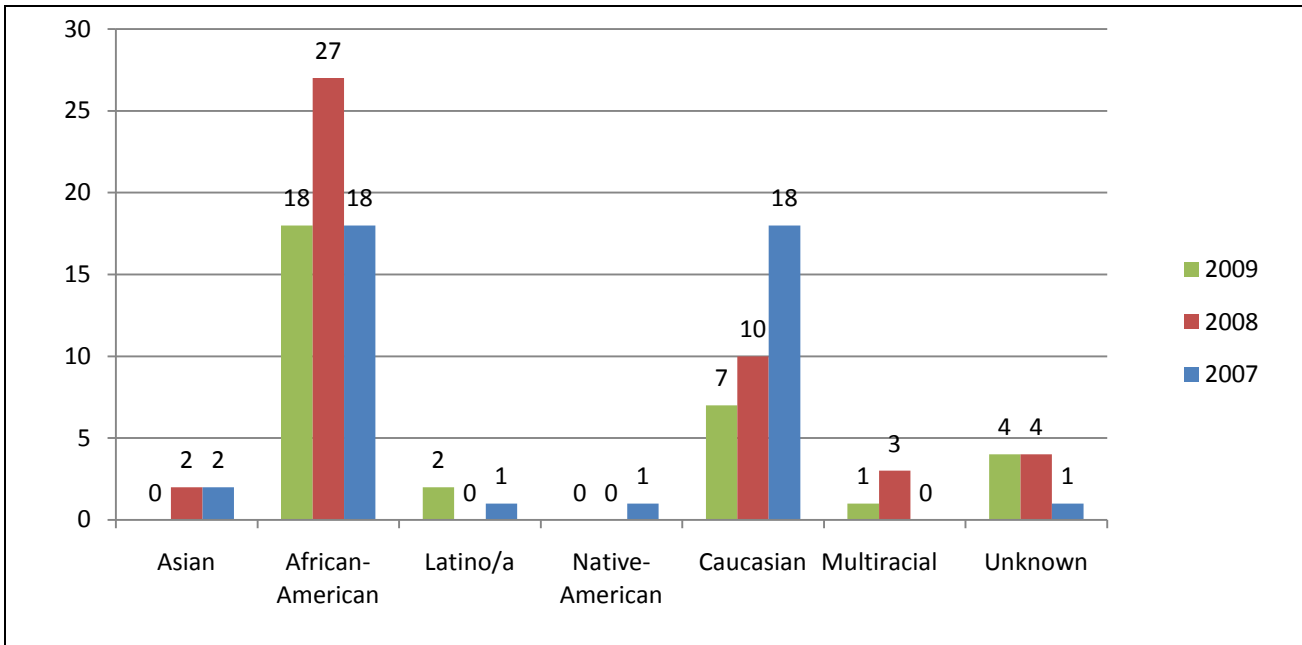
YEAR	CASES CARRIED OVER TO THE NEXT YEAR
2009	21 open cases carried over to 2010
2008	29 open cases carried over to 2009
2007	75 open cases carried over to 2008

Under Government Code §3304(d) a public agency has one year to investigate an allegation of police misconduct. Since complaints filed towards the end of the year, e.g. November or December, will most likely not get investigated until the next year, several cases are carried over to the next year. Depending on a complaint's complexity and fact pattern, cases typically take 2-6 months to investigate.

In 2009, 21 cases were carried over to 2010. This means that the case was filed in 2009, but were not resolved or closed that year. Of the 21 cases carried over from 2009 to 2010, as of October 2010, all but 2 of those cases have been closed. (See Table 1, page 6.) The PRC strives to lower the number of cases carried over to the next year, so that cases are resolved in a thorough and expeditious manner.

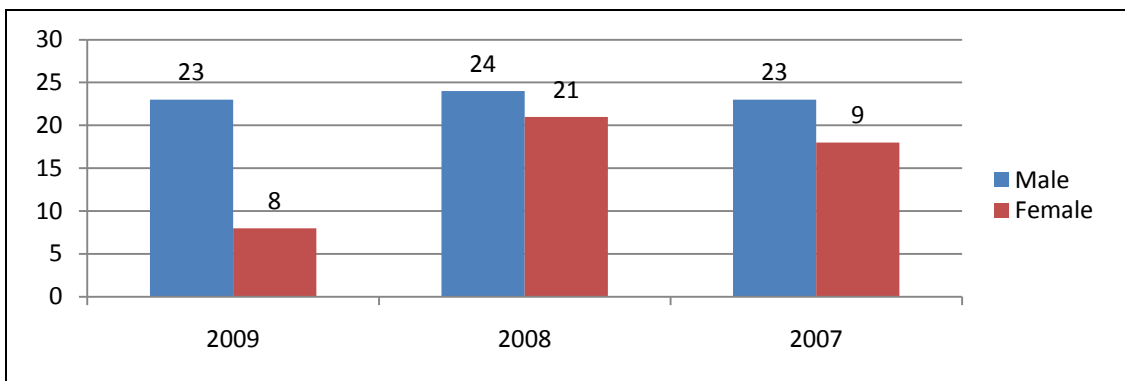


7. COMPLAINANT ETHNICITY



The number of African American complainants decreased between 2008 and 2009: in 2008, there were 27 complainants and in 2009, there were 18 complainants. The number of Caucasian complainants has decreased over the last few years: in 2007, there were 18; in 2008, there were 10; and in 2009, there were 7. There were no Asian or Native American complainants in 2009 and the number of complainants with unknown racial status remained the same as in 2008.

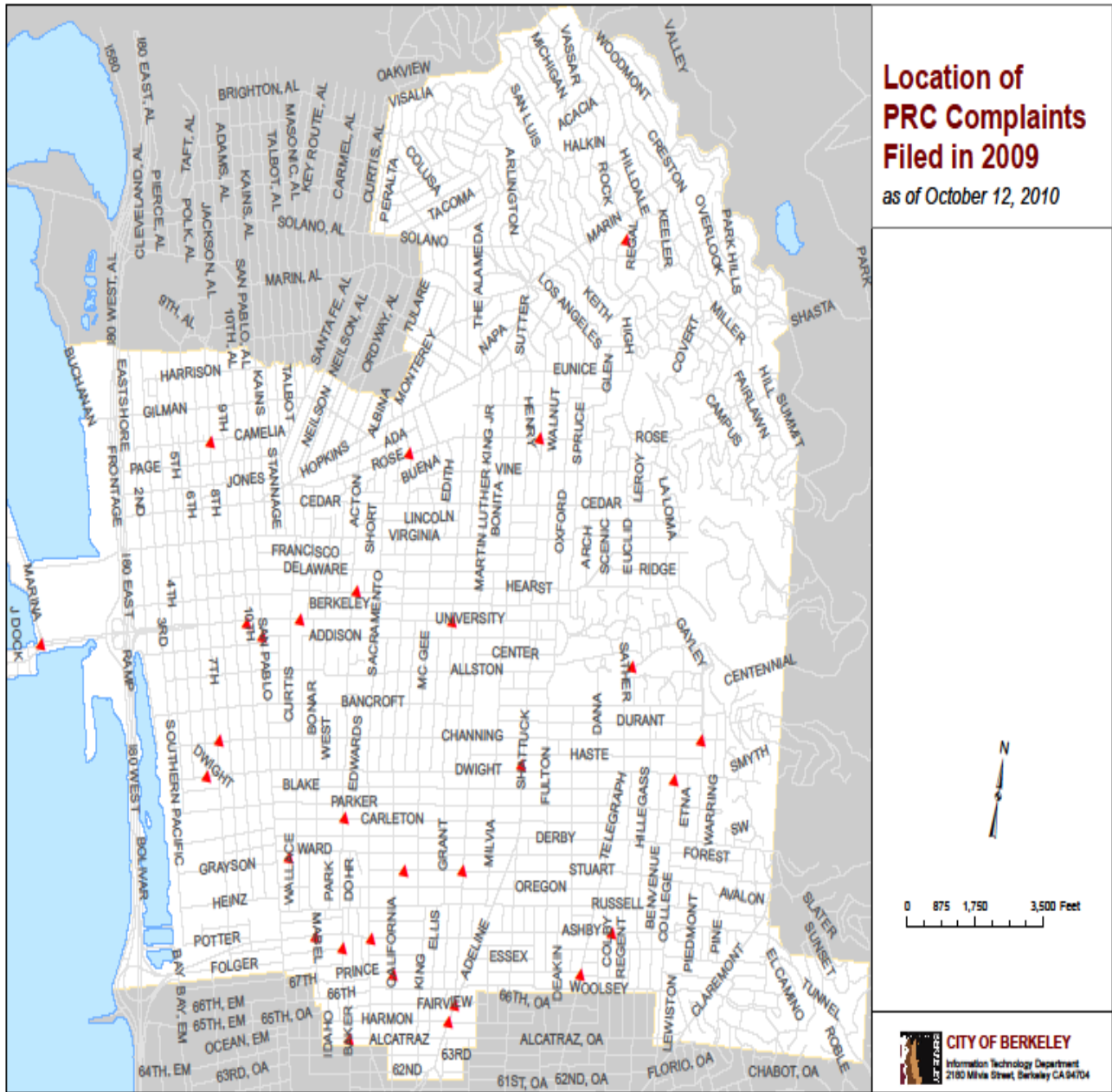
8. COMPLAINANT GENDER





The number of male complainants has remained consistent when compared with 2007-2008. However, the number of female complainants has declined to 9, which is about a third of the number in 2008.

9. INCIDENT LOCATION



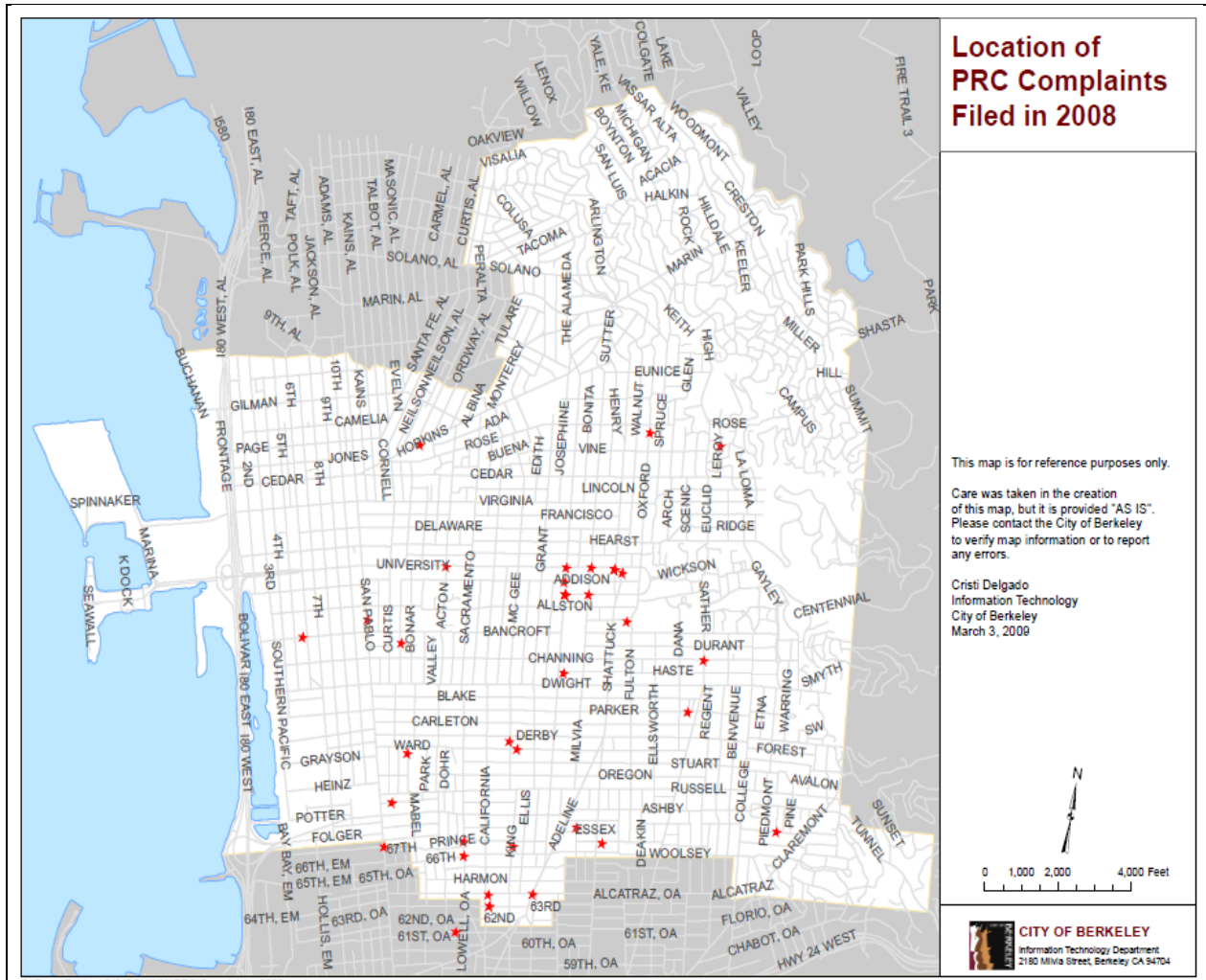
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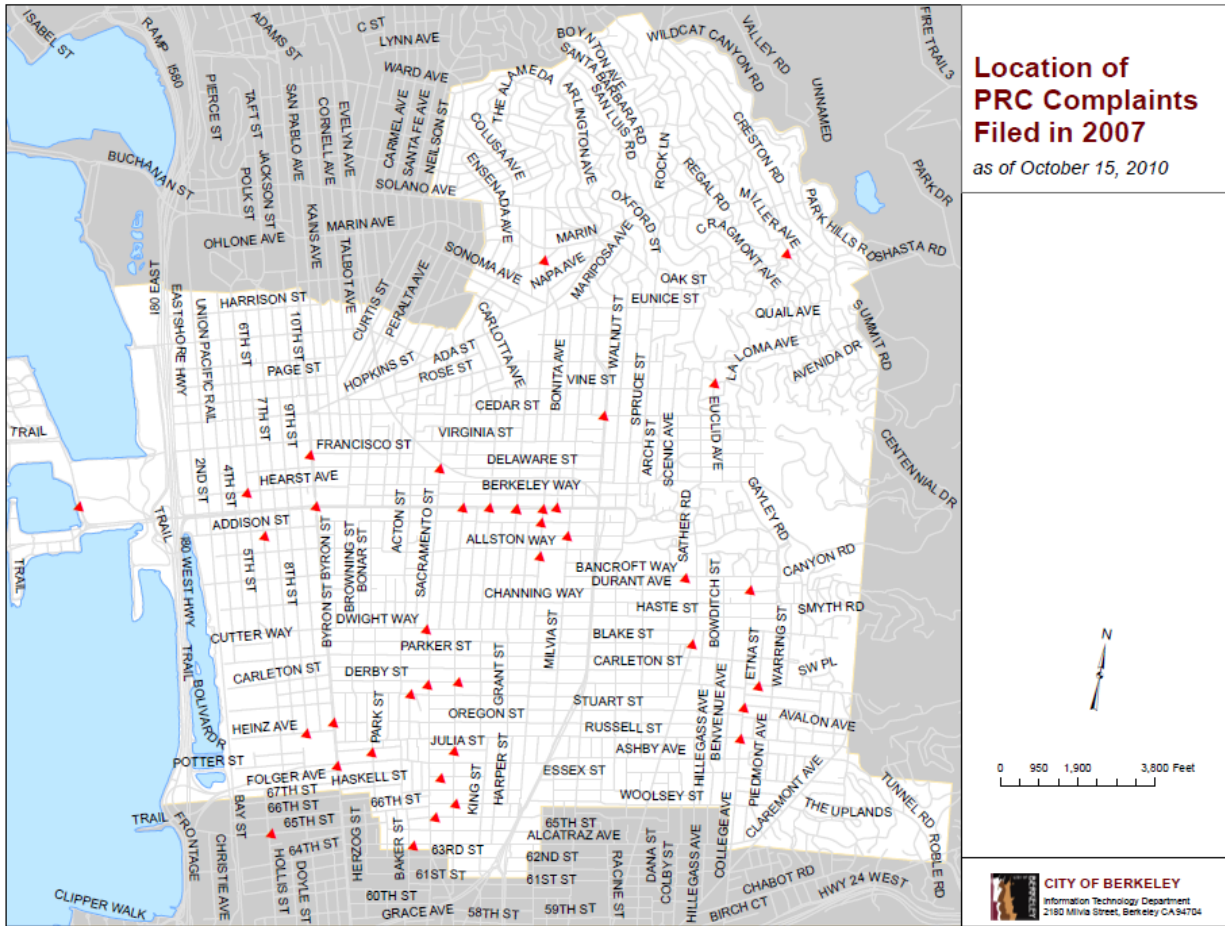


The map of PRC complaints filed in 2009 has only 29 dots indicating the location of each complaint. Although the PRC received 30 complaints, two of the complaints occurred at the same location.

The incident location from a complaint can provide valuable information in analyzing complaint trends and patterns when reviewing law enforcement complaints. In 2009, the complaints appear scattered throughout Berkeley and there does not appear to be any one area where most complaints originate. The North and East areas appear to have low complaint numbers. Southwest Berkeley has the most complaints, but the numbers are not much higher when compared to other incident locations.

The 2007 and 2008 Incident Location maps are similar to the 2009 map, because the incidents are spread out throughout Berkeley. There appears to be a few more complaints in Southwest Berkeley, but not by a significant amount. In 2007, there appears to be a greater concentration of complaints in Southwest Berkeley.





10. CALOCA OFFICER APPEALS: POST PRC REVIEW

Year	Cases with Caloca Review	Caloca Findings
2009	0 Cases	N/A
2008	1 Case, 1 Allegation	1 Sustained Allegation Upheld
2007	0 Cases	N/A

Since June 2002, the City of Berkeley has implemented an appeal process for police officers, who have had misconduct allegations sustained by the PRC (See Caloca v. County of San Diego (2002) 102 Cal. App. 4th 433 (“*Caloca*”). The City of Berkeley contracts with the Office of Administrative Hearings (OAH) in Oakland to adjudicate the *Caloca* appeal hearings.



In 2009 and 2007, PRC did not receive any appeal requests from subject officers, so no *Caloca* hearing occurred. In 2008, a PRC Board of Inquiry sustained one allegation in a case. The subject officer appealed the board's finding to an Administrative Law Judge (ALJ) and a *Caloca* hearing was held. The ALJ affirmed the PRC's sustained finding.

VII. POLICY REVIEW

The Ordinance establishing the Police Review Commission provides for "community participation in setting and reviewing police department policies, practices and procedures." The PRC undertook review of several Police policies in 2009 and concluded work on many of those as further described below.

1. SEARCH OF HOMES AND THIRD PARTIES SUBCOMMITTEE

MEMBERS: Chairperson White, Commissioners Edwards, Huang and Gurgin

BPD REPRESENTATIVE: Capt. Harris, Lt. Morizono

STATUS: Open (Closed in 2010).

This subcommittee was established on January 28, 2009. In 2007, the PRC received three complaints alleging improper search of a home and in 2008, the PRC received four complaints with similar allegations. These complaints were similar in that parents and grandparents were alleging the police came to conduct a search, because of a suspect living in their home. Since the Commission heard a number of these cases through boards of inquiry, the Commission noticed a pattern and formed this subcommittee to review how police conduct probation and parole searches and their impact on third parties.

The subcommittee reviewed the Special Enforcement Unit Manual on Search Warrants, BPD General Order S-6 on Search Warrants, and the Alameda County District Attorney's Office Point of View, 2002 on "Probation and Parole Searches." On September 9, 2009, the Subcommittee submitted five policy recommendations to BPD. On July 26, 2010, BPD provided the PRC with comments from the PRC's policy recommendations. On September 29, the Commission accepted BPD's comments from the July 26th memorandum and voted to dissolve the subcommittee. PRC staff is in the process of sending a final draft of the revisions to BPD.

2. OFFICER INVOLVED SHOOTING SUBCOMMITTEE

MEMBERS: Chairperson Smith, Commissioner Perezvelez and Edwards.

BPD REPRESENTATIVE: Capt. Harris

STATUS: Open

This subcommittee was established on February 27, 2008. On February 16, 2008, an officer-involved shooting occurred. The Commission formed the subcommittee to review officer tactics and analyze best practices when police use deadly force. The Subcommittee postponed any policy review until a Board of Inquiry occurred, so that they could better understand how to prevent similar incidents from occurring.



On April 13, 2009, a board of inquiry consisting of the full Commission was convened to review the officer involved shooting. After the board of inquiry, the subcommittee reviewed General Order P-12, Police-Involved Shootings and Fatal or Serious Injury Incidents. The Subcommittee also reviewed procedures for officer-involved shootings in other jurisdictions. On May 28, 2009, the Subcommittee forwarded policy recommendations to BPD.

The Subcommittee met with Captain Harris to discuss the subcommittee's recommendations and listened to BPD's concerns. On October 20, 2009, BPD provided comments on PRC's policy recommendations. On October 28, 2009, the Commission accepted the Subcommittee's policy recommendations, which included mandatory drug testing of officers after all officer-involved shootings. Since BPD had an Acting Chief at this time, the Acting Chief wanted to postpone any policy review until the new Chief was appointed.

In 2010, the PRC provided BPD with the Commission's policy recommendations. The PRC is awaiting BPD's response.

3. CROWD CONTROL SUBCOMMITTEE

MEMBERS: Chairperson Huang, Commissioners Kidd and Sherman.

BPD REPRESENTATIVE: Captain Ahearn

STATUS: Closed.

In February, 2008, a series of demonstrations at the Marine Recruitment Center led to crowd control issues with police. On March 6, 2008, the PRC received a petition of 50 signatures requesting a public hearing on crowd control related to the Marine Recruitment Center. On March 13, 2008, the PRC held a public hearing and created the Crowd Control Subcommittee.

Commissioners met with the City Manager and the Chief of Police to discuss the petitioners' concerns. The subcommittee then worked with BPD representative, Captain Ahearn to draft a crowd control policy. Captain Ahearn worked closely with the subcommittee to develop a policy that protected First Amendment rights, dealt with dispersal orders, media relations, use of undercover officers, the escalation of control/use of force and more. On July 8, 2009, the Commission approved the final draft of BPD's General Order C-64, Crowd Management and Control.

4. REGULATIONS REVIEW SUBCOMMITTEE

MEMBERS: Chairperson Perezvelez, Commissioners Bloom, Kidd and Sherman.

BPD REPRESENTATIVE: None.

STATUS: Open (Closed in 2010)

After the California Court of Appeal upheld the Alameda County Superior Court's decision to close PRC hearings to the public and rendered complaint files confidential, the Commission had an opportunity to review the current state of the complaint and hearing procedures. The Commission held boards of inquiry throughout 2008 that complied with the court's order and the Commission needed to re-examine the Regulations to determine what was working and not working. Work continued on the regulations throughout 2009. The Subcommittee invited participation and comment from both the Berkeley Police Association and BPD. The final regulations were adopted in 2010.



5. MUTUAL AID PACTS AND AGREEMENTS SUBCOMMITTEE

MEMBERS: Commissioners Bloom, Kidd and Huang.

BPD REPRESENTATIVE: Captain Harris, Sgt. Curtin.

STATUS: Ongoing.

On June 10, 2009, Jim Chanin, a founding member of the PRC, recommended to the Commission to review the Mutual Aid Pacts and Agreements. This subcommittee reviewed BPD's mutual aid agreements with other law enforcement agencies when they enter Berkeley or work with BPD to perform law enforcement operations. Mr. Chanin noticed that the federal and other agreements were rescinded, so the Subcommittee met with BPD representatives to reinstate the rescinded agreements.

BPD reinstated the federal agreements and other agreements rescinded from prior Mutual Aid Pacts. On February 24, 2010, the Commission voted to approve the Mutual Aid Pacts and send them to City Council for approval with the suggestion that the Pacts be made available online. On April 20, 2010, the City Council approved BPD'S Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organization. The Subcommittee plans to review the Mutual Aid Pacts on a yearly basis and recommend to the Commission if they agree or disagree with the current Pacts.

6. AUTHORITY - LIMITS AND DISCRETIONARY USE

MEMBERS: Commissioner Smith and Perezvelez

BPD REPRESENTATIVE: Former Interim Chief Gustafson.

STATUS: Closed

On August 18, 2009, BPD rescinded General Order A-1, Authority – Limits and Discretionary Use. The policy outlined how officers should use the “least intrusive action” when exercising discretion in the performance of police officer duties. BPD stated that they rescinded the policy, because it offered little guidance to officers and there were existing policies that covered officer discretion.

Commissioners met with former Interim Chief Gustafson and members of the City Manager's Office to discuss what worked for BPD and PRC and to clarify the PRC's concerns. The group also discussed how PRC currently used General Order A-1, what situations are not currently addressed by the specific policies and how the policy can be revised to address situations not addressed by current policies.

BPD reinstated General Order A-1 and included language that stated, “The quality of police service depends upon the manner in which it is exercised. It is the policy of the Berkeley Police Department that sworn officers should always seek to **be courteous and respectful, exercise sound discretion in the performance of their duties, and enforce laws in a fair and impartial manner.**” (Bold areas indicate revised language)



VIII. TRAINING AND OUTREACH

1. BART POLICE DEPARTMENT REVIEW COMMITTEE

On May 2, Commissioner White and PRC Officer Urbi joined local police oversight practitioners and participated in a community Forum on Civilian Oversight Models. Commissioner White shared the experiences of PRC and how PRC conducts boards of inquiry. Commissioner White continued to attend Committee meetings to provide expertise on civilian review of police. Subsequently, the BART Committee created a model with an independent police auditor and citizen oversight board to review BART police actions.

2. UNIVERSITY OF CALIFORNIA AT BERKELEY, CAL IN LOCAL GOVERNMENT STUDENT INTERNS

PRC worked with U.C. Berkeley's Cal in Local Government Internship Program, where two students worked at the PRC office and learned about police oversight. The students attended Commission meetings, assisted in transcribing interviews, and learned the inner operations of working for a government agency

"INTERNSHIP SITE OF THE YEAR"

Cal in Local Government (CLG) awarded the Berkeley Police Review Commission as the "Internship Site of the Year" for their "meaningful contribution to the community" on May 5, 2009.

Interns Vanessa Dougherty and Nancy Perez (2008-2009) nominated the PRC as the internship site of the year. CLG accepted nominations from student interns who worked at several government and non-profit agencies.

"Working as an Investigative Assistant Intern for the Police Review Commission was one of the most memorable experiences of my freshman year. My internship with the PRC, which consisted of retreats, Commission meetings, and an end-of-the-year policy project, helped me gain a variety of skills and knowledge about public policy and comparative civilian oversight organizations, and my positive experience with the PRC and its dedicated staff members has motivated me to pursue more opportunities in public service and in my local government."



—Catherine Choe, PRC Intern

3. NATIONAL NIGHT OUT

In August, PRC staff, Commissioner Gurgin and former 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 crime prevention. 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.

APPENDIXES

APPENDIX 1

OVERVIEW of the POLICE REVIEW COMMISSION

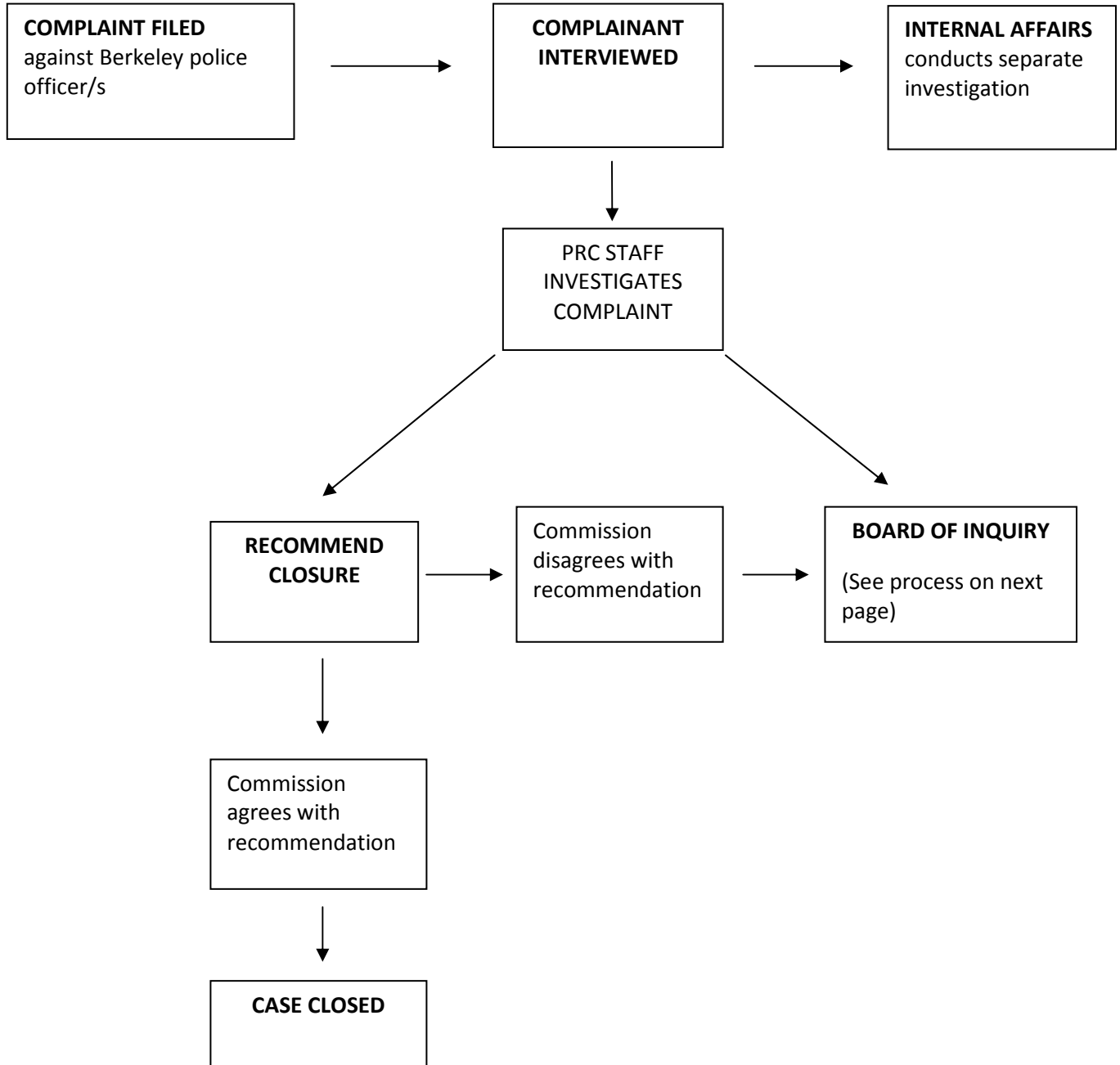
OVERVIEW OF THE POLICE REVIEW COMMISSION

Police Review Commission	An independent civilian oversight agency that investigates and hears complaints concerning Berkeley Police. External to the Police Department.
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.
Commission Meetings	<ul style="list-style-type: none"> • All Commission meetings are open to the public. • Commissioners meet on the 2nd and 4th Wednesdays of each month at 7:00pm at the South Berkeley Senior Center, 2939 Ellis Street, unless otherwise noted. • Please visit website for current schedule at www.ci.berkeley.ca.us/prc/
Commissioners	9 Commissioners appointed by the City Council and the Mayor. Commissioners are volunteer members of the community and may receive stipends.
Function	<ul style="list-style-type: none"> • Conducts independent investigations of complaints concerning 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.
Types of Complaints	Complaints vary from: discourtesy, excessive force, improper search, improper police procedures, abuse of discretion, and more.
Authority for oversight	Berkeley Municipal Code Ordinance No. 4644-N.S. Establishing a Police Review Commission, adopted by voter initiative on April 17, 1973
Police Department	<ul style="list-style-type: none"> • 174 sworn police officers
Complaint Outcome	Cases are either recommended for a hearing or closure administrative closure.
Contact	1947 Center Street, Third Floor, Berkeley, CA 94704 Tel: (510) 981-4950 TDD: (510)9 81-6903 Fax:(510) 981-4955 E-mail: prc@ci.berkeley.ca.us http: // www.ci.berkeley.ca.us/prc/

APPENDIX 2

COMPLAINT PROCESS

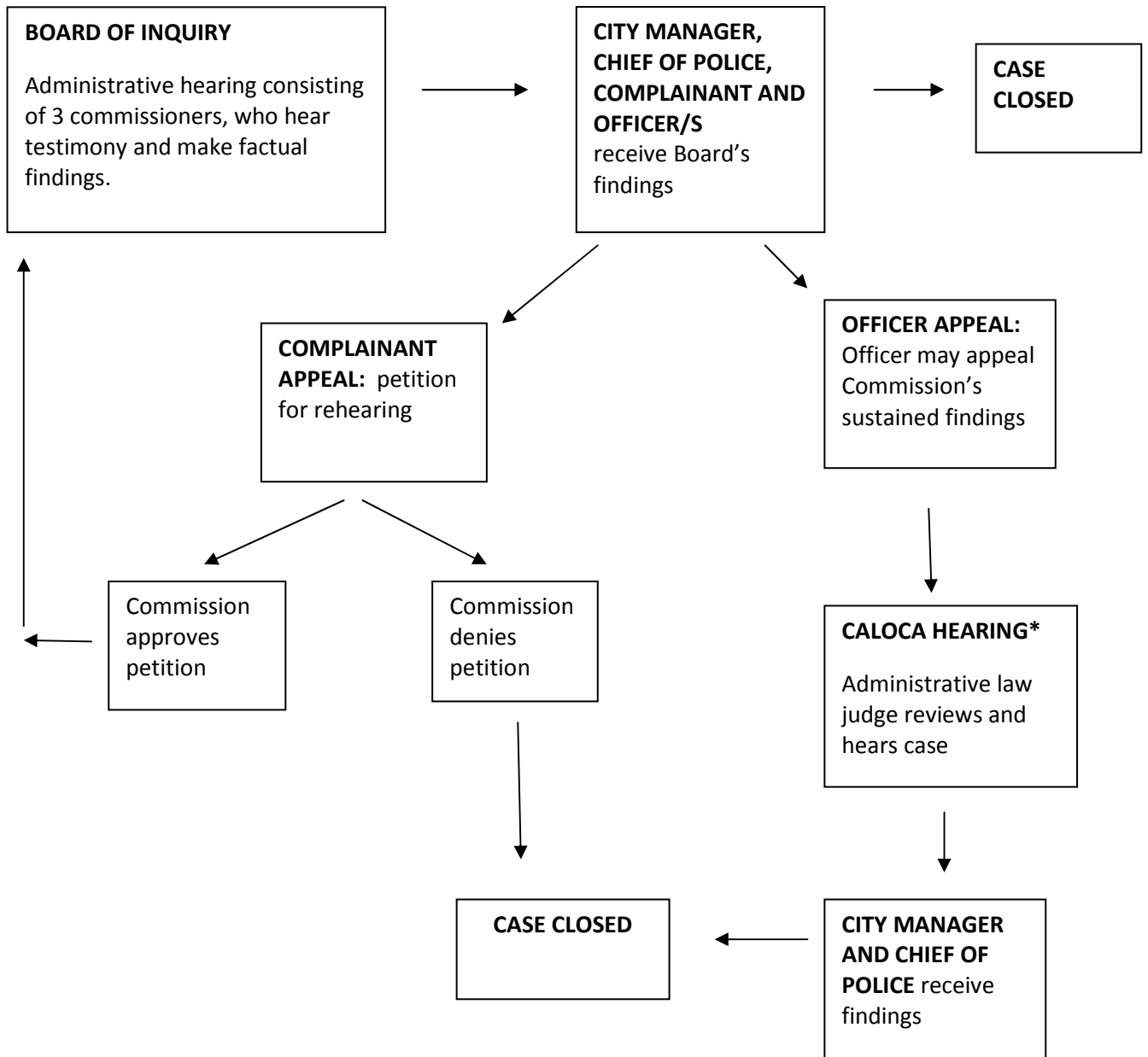
COMPLAINT PROCESS



APPENDIX 3

BOARD OF INQUIRY PROCESS

BOARDS OF INQUIRY PROCESS



* See *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209 and *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, which require the City afford police officers the opportunity for an administrative appeal, under Government Code Sections 3300 et seq., of a citizen advisory board's sustained findings of misconduct.

BOARDS OF INQUIRY

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. Complainant and Subject officer may provide a 15-minute closing argument. 6. Commissioners deliberate outside the presence of the officers. 7. Commissioners will announce findings. 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 10 days 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>

APPENDIX 4

INVESTIGATION PROCESS

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.

APPENDIX 5

MEETINGS AND ACTIVITIES

MEETINGS & ACTIVITIES

January

- 14 Regular Meeting
- 21 Board of Inquiry – Complainant Lockett (met but cancelled)
- 26 Policy Subcommittee Meeting – Regulations Review
- 28 Regular Meeting

February

- 11 Regular Meeting
- 18 Closed Session Meeting

March

- 11 Regular Meeting
- 16 Policy Subcommittee Meeting – Regulations Review
- 17 Board of Inquiry – Complainant Lockett
- 25 Regular Meeting

April

- 7 Regular Meeting
- 13 Board of Inquiry – Complainant Gay
- 22 Regular Meeting
- 29 Policy Subcommittee Meeting – Regulations Review

May

- 2 BART Forum on Civilian Oversight Models
- 6 Board of Inquiry – Complainant Davis
- 13 Regular Meeting
- 13 Policy Subcommittee Meeting – Officer-Involved Shooting
- 27 Regular Meeting

June

- 1 Board of Inquiry – Complainants Thomas
- 3 Policy Subcommittee Meeting – Regulations Review
- 8 Board of Inquiry – Complainant Lockett
- 9 Policy Subcommittee Meeting – Crowd Control
- 10 Regular Meeting
- 15 Board of Inquiry – Complainant Fisher
- 16 Policy Subcommittee Meeting – Search of Homes
- 22 Board of Inquiry – Complainant McGee
- 24 Policy Subcommittee Meeting – Regulations Review

MEETINGS (CONTINUED)

July

- 8 Regular Meeting
- 8 Policy Subcommittee Meeting – Officer-Involved Shooting
- 15 Policy Subcommittee Meeting – Regulations Review
- 21 Board of Inquiry – Complainant Beamon
- 22 Regular Meeting
- 22 Policy Subcommittee Meeting – Regulations Review
- 29 Board of Inquiry – Complainant McClain

August

- 4 National Night Out

September

- 2 Regular Meeting
- 9 Policy Subcommittee Meeting – Search of Homes
- 16 Policy Subcommittee Meeting – Mutual Aid Pacts
- 23 Regular Meeting
- 29 Board of Inquiry – Complainant Weiss

October

- 7 Policy Subcommittee Meeting – Officer-Involved Shooting
- 14 Regular Meeting
- 19 Policy Subcommittee Meeting – Search of Homes
- 21 Policy Subcommittee Meeting – Regulations Review
- 24 Annual Commission Retreat and Training
- 27 City Council Meeting – Presentation of 2008 Statistical Report
- 28 Regular Meeting

November

- 10 Board of Inquiry – Complainant Key
- 18 Regular Meeting
- 23 Policy Subcommittee Meeting – Mutual Aid Pacts

December

- 1 Policy Subcommittee Meeting – Regulations Review
- 8 Policy Subcommittee Meeting – Mutual Aid Pacts
- 9 Regular Meeting – Election for Chair and Vice Chair
- 16 Board of Inquiry – Complainant Horncliff
- 23 Board of Inquiry – Complainant Bronson

APPENDIX 6

MEETING SUMMARY

MEETING SUMMARY

Type of Meeting	Number of Meetings
Regular PRC Meetings	18
Regulations Review Policy Subcommittee	9
Mutual Aid Pacts Policy Subcommittee	3
Search of Homes Policy Subcommittee	3
Officer Involved Shooting Policy Subcommittee	3
Boards of Inquiry	14
Crowd Control Subcommittee	1
Trainings	1
Closed Session with Legal Counsel	1
Other Activities	2
TOTAL MEETINGS	55

APPENDIX 7

PRC ORDINANCE

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

***1947 Center Street, 3rd Floor - Berkeley, CA 94704 - (510) 981-4950
TDD (510) 981-6903 FAX (510) 981-4955***

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 (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.

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

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.*~~

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

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

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:

- 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,

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

- 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

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."

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

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 8

PRC REGULATIONS

CITY OF BERKELEY

REGULATIONS

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

POLICE REVIEW COMMISSION

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510.981-4950 TDD: 510.981.6903 FAX: 510.981-4955
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EXHIBIT A Report of Successful Mediation (Not used and not included)

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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.

PRC Regulations-1

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

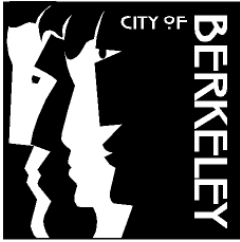
- a. Amendments shall be numbered sequentially and dated, and shall indicate where they are to be placed in the procedure (i.e., "supersedes Section 29," or "read between Section 29 and Section 30").

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.

APPENDIX 9

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):

Lined area for providing a factual 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



HOW TO FILE A COMPLAINT

The Berkeley Police Review Commission (PRC) is an independent body appointed by the City Council and the Mayor. The Commission investigates complaints against Berkeley Police Department (BPD) personnel. The PRC is staffed with civilian investigators.

INSTRUCTIONS

1. **COMPLAINT FORM:** Complete and **sign** the complaint form. This can be picked up at the PRC office, mailed, faxed, sent via electronic mail or downloaded from the PRC website at <http://www.ci.berkeley.ca.us/prc/>.
2. **REGULATIONS:** The PRC Regulations contains the set of rules for how complaints are handled against BPD. For more information on how complaints are processed and boards of inquiry hearings, please obtain a copy of the Regulations.
3. **DEADLINE TO FILE COMPLAINT:** A complaint must be filed within 90 days of the time you knew of the incident that is the subject of the complaint. The Commission, upon a showing of good cause, may extend this time limit by another 90 days; however, the police do not have to participate in the process in late-filed cases.
4. **REPRESENTATION:** You have the right to have a representative at any stage in the process. **If you have criminal charges pending, you should consult with your attorney before filing your complaint.** In many cases, police officers involved in PRC investigations are represented by union representatives or attorneys. The following groups may be helpful to you and can be contacted for assistance:
 - Eastbay Community Law Center, 2921 Adeline Street, Berkeley (510) 548-4040
 - American Civil Liberties Union of Northern California (ACLU)—(415) 621-2488
 - Lawyer Referral Service—Alameda County Bar Association (510) 893-8683
 - Bay Area Police Watch—Police misconduct lawyer referral service (415) 951-4844 x 24
5. **CONFIDENTIAL RECORDS:** Complaint investigative records are confidential personnel records.
6. **INVESTIGATION:** Interviews with you, the officers and witnesses involved will be recorded and will become part of the investigative report. The PRC investigation, the hearing, and results of the hearing are confidential records.
7. **INTERNAL AFFAIRS INVESTIGATION:** A copy of the complaint and allegations will be sent to the Internal Affairs Bureau of the Police Department, and they will then conduct their own investigation.
8. **MEDIATION:** In some cases you will have the option of choosing mediation instead of an investigation. The PRC investigator may discuss this option with you.



9. **NO MERIT FOUND:** If the investigator believes that the complaint either does not state a case of misconduct or that it is "without merit," a recommendation may be made to the Commission to summarily dismiss the complaint. You will be notified and given an opportunity to explain to the Commission why the investigation should continue.
10. **BOARD OF INQUIRY:** If the investigation reveals that there are issues in dispute and the allegations relate to a case of misconduct, a board of inquiry will be scheduled. For more information, see the Closed Hearing Procedures informational sheet.

COMPLAINANT'S RESPONSIBILITIES

As a complainant, you have certain responsibilities to ensure that the investigation is completed and a hearing is conducted:

- You must be available for an interview with an investigator. It is desirable that an interview is conducted when you file your complaint. If there is no investigator available or if your schedule does not permit an interview at this time, you should set up an appointment for an interview at the time you file your complaint. Additionally, you may request to have an investigator come out and conduct an in-home interview, or an interview by telephone.
- If there are witnesses that you want to involve in the process, you should help locate them and make them available for interviews.
- Notify the PRC investigator if you move or change your phone or message number. Your case will be recommended for closure if the PRC investigator cannot contact you.
- Out of fairness to the parties, all evidence to be considered by the Board of Inquiry must be available to all of the parties at least 48 hours prior to a hearing. If it has not been available to everyone prior to that time, the Board is not required to consider it as evidence. Therefore, the information must be received at the PRC office at least three working days prior to a hearing.
- **You must be present at the hearing before the Board of Inquiry. You will receive notice about a week before the scheduled date of hearing. When you get notice, it is your responsibility to call the office at least *three days* before the hearing and confirm that you will be able to attend. If you do not confirm your attendance, the Board will be cancelled.**
- Failure to cooperate with the investigation can result in dismissal of the complaint.

INVESTIGATION PROCESS

1. **ALLEGATIONS:** Within one month of filing the complaint, you should receive a copy of the formal allegations of misconduct under investigation. These are the only allegations that will be investigated and heard by the PRC. If you disagree or have questions about the allegations, please discuss your concerns with the PRC investigator.
2. **REPORT:** A confidential investigative report will be produced and made available to a board of inquiry. The Board of Inquiry should occur approximately 3 1/2 months from the date of filing the complaint.
3. **BOARD OF INQUIRY:** You will receive written notice of the time and place of the Board of Inquiry. The Board is usually a three-member panel of Commissioners who will hear testimony from you, the subject officer/s, and any witnesses relevant to the case. The subject officer/s or their representative/s will have an opportunity to cross-examine you. The Commissioners will ask questions they feel are appropriate.

4. **COMPLAINANT'S ROLE AT THE BOARD OF INQUIRY:** Since the officer is the subject of the complaint and must answer to the allegations from the complaint, the complainant is only a witness at the hearing. The complainant may not ask the Commissioners or the officer questions about the incident, but may ask questions about the hearing process.
5. **COMPLAINT RESOLUTION:** The decision of the Board of Inquiry will be mailed to the parties soon after the hearing.
6. **APPEALING THE DECISION:** If you are dissatisfied with the outcome, you have the right to appeal to the full Commission for a new hearing within 15 days of the mailing of the decision. According to Section III.22. of the Regulations, a rehearing may be granted if "... there is newly discovered evidence ... or if it is shown that there was substantial procedural error likely to have affected the outcome."
7. **FINDINGS:** The results of the hearing are then given to the City Manager and Chief of Police, who will act on the findings as appropriate.

If you have any questions about this process, please call the PRC at 510 981-4950.

Revised 06.30.09

What to Expect at Community Mediation

1) *Telling your Side, and Listening*

- First, each party gets 5-10 minutes to explain his/her side of the situation. You can talk about what it is that you see as the problem, and how you feel about it. While you are explaining your side, the other party and the mediators will listen.
- Then, you and the mediators will listen as the other party explains his/her view.
- The mediators may ask some clarifying questions and will summarize what they heard you say to make sure they understand the situation from your point of view and that all issues are on the table.

2) *Dialogue*

- The parties then talk with each other. They communicate their interests and concerns so that each understands how the conflict has impacted the other.
- The mediators help to ensure that each person has a chance to express him or herself and hear the other's perspective. The mediators also help to clarify new understandings and identify what facts and issues you agree on and disagree on.

3) *Resolution*

- At the appropriate time, the discussion will turn to problem-solving. Together, you and the other party will generate possible solutions to the situation and talk about them.
- The mediators will help you assess the different options. If an agreement is reached, the mediators will help ensure that it is satisfactory to each person and that the expectations are clear. A mediated agreement can be oral or written.
- The mediators WILL NOT make any judgments or tell you what to do. The agreement will not be legally binding, but if both parties agree, you may have the agreement re-drafted outside the mediation process so that it will be enforceable in a court of law.

Other Points to Remember:

- **Length of Mediation:** Sessions usually take 2-3 hours. Please allow for the maximum time. If you have a time restriction, please let us know prior to the mediation. Additional sessions can be scheduled if the parties feel they are making progress but need more time.
- **Sliding Scale Fee:** There is a sliding scale administrative charge per party, per session for our service. Our standard fee for mediation is \$50; \$100 for business and real estate cases. (For cases under Berkeley Tree View/Solar Access Ordinance, the Complainant must cover the full cost of mediation (\$100), unless other arrangements are agreed to.) *If the fee is a financial burden, please notify the office and we will lower or waive it.*
- **Who May Attend:** If you want to bring someone involved in the dispute to participate or observe, please let us know in advance, as we will need to get the consent of the other party or parties. If you are represented by a lawyer in the dispute to be mediated, he or she may attend the session, if all parties consent. *The level of attorney participation will be decided on a case by case basis.*
- **Children at the Mediation:** Unless an older child is a party to the mediation, it is not appropriate to bring children. If childcare is not available to you, please discuss this with your Case Manager at SEEDS CRC *prior* to the mediation.

Please use this form to prepare yourself for mediation. Should you have any questions or concerns please call us. Alternatively, we may contact you to discuss mediation preparation so that your experience is optimized.

A brief description of the mediation session

In your mediation session each party will make an opening statement (5- 10 minutes) to a panel of two or three mediators. The mediators will summarize each statement to make sure that they have a full and accurate understanding of each party's views. The mediators will then encourage the parties to talk directly to each other to discuss the issues. At some point, the discussion turns to problem-solving, where various solutions are generated and evaluated by the parties. Mutually-acceptable solutions are then used to create an agreement.

Questions and tips to help you prepare for the mediation.

- How do I view the situation?
- What are my interests?
- What are the main issues?
- How do these issues affect you and your interests?
- How do I want things to be different?
- What do I think is needed from the other person in order to make those changes?
- What do I think is needed from me to make those changes?
- Any speculations on how I think the other person would like things to change?
- What can I do during the meeting that will help the other person to be able to understand my point of view?

Be prepared to listen to the other Party's view of the situation.

What are the issues in the view of the other party? How do those issues affect the other party? Many conflicts occur because neither party has enough accurate information about the other to truly understand the situation. Without enough information, it is hard to come up with a solution that both parties can live with.

Have a clear idea of what you can do to satisfy your interests if you can't come to an agreement in mediation.

In the mediation session you need to have some way to evaluate proposed solutions, so it is good to have something to compare them to.

Be prepared to work with the mediators

The mediators help you and the other parties discuss the issues in a respectful and productive manner. They do not decide who is right or wrong, or impose solutions.

They are trained to help you speak to one another effectively.

Help SEEDS Grow in Your Community

Name: _____

Address: _____

City: Zip: _____

Phone(s): _____

Email: _____

- Please add me to your mail and email list to receive SEEDS updates.
- I would like to have SEEDS come to my group to give a presentation about effective options for making decisions and resolving conflict.
- I am interested in becoming a SEEDS community volunteer.
- I would like to donate computer assistance, publication design, clerical help, or other in-kind goods or services to SEEDS.
- I would like to support SEEDS' work. Enclosed is my donation of:
 \$50 \$100 \$250 \$_____

SEEDS is a 501(c) 3 non-profit community-based organization.

We depend on donations from individuals and businesses to operate. Please accept our thanks ahead of time for all gifts. Send your tax-deductible contributions to:

SEEDS Community Resolution Center
1968 San Pablo Avenue
Berkeley, CA 94702

SEEDS

Community Resolution Center

SEEDS Administrative Office

Mailing address:

1968 San Pablo Avenue

Berkeley, CA 94702

SEEDS Satellite Offices

By appointment only:

1212 Preservation Park Way, 2nd Fl.

Oakland, CA 94612

39155 Liberty Street, Room D450

Fremont, CA 94538

Wheelchair accessible

Contact SEEDS

Phone: (510) 548-2377

Fax: (510) 548-4051

E-mail: info@seedscrc.org

Website: www.seedscrc.org

SEEDS represents the union of three organizations:

Conciliation Forums of Oakland (CFO),
Berkeley Dispute Resolution Service (BDRS), and
Mediation Services.

SEEDS

Community Resolution Center

Mediation | Facilitation | Training

Services that

Encourage

Effective

Dialogue and

Solutions

For More Information, call

(510) 548 - 2377

www.seedscrc.org

Formerly East Bay Community Mediation

cultivating common ground

Mediation

GOT CONFLICT?

Don't Stress. Don't Fight. Don't Litigate. MEDIATE.

SEEDS offers trained neutral mediators to help you and others in conflict find constructive solutions that meet everyone's needs.

SEEDS can MEDIATE

- Family/Relationships
- Business/Workplace
- Landlord-Tenant
- Zoning/Land Use
- Schools/Youth
- Neighbor
- And more!

SEEDS Mediation services are:

RESTORATIVE

Mediation honors relationships and fosters better communication and understanding

EFFECTIVE

75-80% of cases mediated end with a satisfactory resolution for all

CONFIDENTIAL

Statements made in mediation cannot be used in civil court without your permission

AFFORDABLE

Sliding scale, no one turned away for inability to pay

Already have a court case pending? Ask us about our court-based mediation services.

Facilitation

COULD YOUR GROUPS AND MEETINGS BE MORE PARTICIPATORY AND PRODUCTIVE?

SEEDS will custom design a process to help your group, organization or community work collaboratively and achieve desired goals and outcomes.

SEEDS can FACILITATE

- Newly formed teams and partnerships
- Complex, multi-party, multi-issue disputes
- Group, Board, or organization retreats and strategy sessions
- Community forums and town hall meetings for civic engagement and dialogue

SEEDS Facilitation services are:

PRODUCTIVE

Achieve goals while building and balancing relationships in your group

PARTICIPATORY

More people involved – more voices heard – more effective outcomes

FLEXIBLE

We utilize a variety of facilitation strategies and styles to accommodate your group's needs

COST EFFECTIVE

Priced to fit a wide range of organizational and community budgets

Training

WOULD YOU LIKE TO IMPROVE YOUR ABILITY TO COMMUNICATE AND PROBLEM-SOLVE?

SEEDS will help you or your organization cultivate your skills and capacity to manage conflict, communicate more effectively, and develop lasting solutions.

SEEDS Sample WORKSHOPS

- Effective Communication & Feedback
- Managing Conflicts in the Workplace
- Dealing with Cross-Cultural Differences
- Mediation Skills Certificate Program
- Facilitation Skills Certificate Program

SEEDS Training Workshops are:

PRACTICAL

Skills easily transfer to work and personal life

PERSONALIZED

We customize trainings to suit your group's needs and provide individual attention to participants.

INTERACTIVE

We use experiential/hands-on methods that engage all types of learning styles

COMPETITIVELY PRICED

We work to accommodate your organization's budget and financial constraints

Revenues from SEEDS fee-based workshops underwrite our community programs

APPENDIX 10

CATEGORIES OF 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	ihh
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