



Police Review Commission

ACTION MINUTES OF THE REGULAR MEETING OF THE POLICE REVIEW COMMISSION

South Berkeley Senior Center
2939 Ellis Street
Berkeley, California

Date: Wed. May 9, 2001
Time: 7:30 p.m.

1. ROLL CALL: 7:45 p.m.

Commissioners Present: Bennett, Farrell, Ritchie, Sternberg, Schlosberg

Commissioners Absent: DeBose (Excused), Sanchez-Resnik (Excused), Sherman, White (Excused)

PRC Staff: Barbara Attard

BPD Personnel: Sgt. Gordon; Lt. Yuen

2. PUBLIC COMMENT --None

3. MINUTES OF THE APRIL 25, 2001 MEETING

Bennett/Farrell (Moved/Seconded) to approve the meeting minutes. Passed with Ritchie abstaining.

4. PRC OFFICER'S REPORT (For Discussion or Action)

- a) New Filings—Two since last meeting
- b) Boards of Inquiry

Upcoming Boards were discussed. The Board for May 10 has been rescheduled for May 24.

c) Request for Late Filing, PRC Case # 1861, Filed by Dr. Stephen Hart

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Ritchie/Schlosberg (Moved/Seconded) to accept late filing. Two ayes. Did not pass. Item held over until 5/23/01 as 6 votes are necessary to accept late filed cases and only 5 commissioners were present.

d) Request for Rehearing, PRC Case # 1846, Filed by Mr. Rudolph Johnson

Issues raised by Mr. Johnson were discussed. None of the commissioners who heard the case were present at the meeting. PRC Regulations require that the Request for Rehearing be voted on within 21 days of receipt of the request.

Sternberg/Ritchie (Moved/Seconded) to grant rehearing request. Passed: Ayes--Ritchie, Sternberg, Schlosberg. No: Farrell. Bennett recused.

e) Policy Issue Update:

- PRC Case #'s 1776, 1794, 1796, 1797—Bicycle Issues—Held over to June

No discussion of this item.

5. BPD CHIEF'S REPORT--None

6. COMMITTEE REPORTS (For Discussion or Action)

a. Recruitment Update—Commissioner Sanchez-Resnik attended a meeting

b. LGBT Update—Training is concluded and a debriefing with the trainers was held.

7. OLD BUSINESS (For Discussion or Action)

a. Council Item Regarding Regulation of Parades

City Attorney Zach Cowan reviewed proposed changes to Berkeley Municipal Code 13.44 regarding regulation of parades and block parties. Some language changes were recommended by the Commission and agreed to by Mr. Cowan. No further action taken on this item.

Mr. Cowan stated that an item regarding requiring event promoters and venue operators to provide advance notice to the police department may be brought to the Council in June.

8. NEW BUSINESS (For Discussion or Action)

a. Review of PRC Findings by City Manager

This item was placed on the agenda by Commissioner Schlosberg because the City Manager (CM) review of PRC cases has been put on hold until the City completes “meet and confer” with the BPA regarding a post-hearing review of PRC cases in response to the *Caloca vs County of San Diego* (1999) Cal.App.4th 1209 case.

Deputy City Attorney Sarah Reynoso attended the PRC meeting and explained to the PRC that the County of San Diego civilian oversight process (CLERB) is very similar to the PRC process. Because

of parallel issues in both agencies, the City Attorney has concluded that the City of Berkeley must comply with *Caloca* and provide an opportunity for an officer to appeal PRC sustained findings of misconduct. The *Caloca* court held that this appeal hearing is required required under Government Code section 3304, the Public Safety Officers Procedural Bill of Rights, even where discipline is not imposed.

Ms. Reynoso met with the PRC “*Caloca* ad hoc committee” (consisting of Dave Ritchie, Bill White, Bill Taylor and Mark Schlosberg) in January 2001 and informed the commissioners of the meet and confer process. The City Attorney does not believe that reviews of PRC cases as they have been completed in the past will continue under *Caloca* since an appeal hearing is required to under *Caloca*. If the CM review process that has taken place in the past continues, i.e. a City Manager designee reviewing the PRC and IA cases and determining whether or not the Manager agrees with the PRC, there may be a need for two separate reviews after the PRC hearing. Also, this review would be redundant where the officer has requested a *Caloca* appeal. The City has been working on developing an appeal process through “meet and confer” with the BPA, which complies with the City's legal obligations under *Caloca*. This new *Caloca* appeal process will take the place of the former City Manager review process. In cases where an officer does not request a *Caloca* appeal, the City has not yet determined what process will be developed for PRC findings. The *Caloca* review would not involve comparing the PRC case to the IAB case. The City Manager may utilize the PRC's decisions for reviewing BPD policy and identifying where changes may be needed.

Several Commissioners explained that they see a benefit to the review of PRC and IA cases and comparing the two—they believe that with the review of both investigations a broader scope of information is available. They also believe that this high level review in the Manager's office validates the process of conducting PRC Boards of Inquiries and completing findings.

Commissioner Sternberg stated that he had not read the *Caloca* case and expressed interest in seeking independent counsel to advise the PRC on *Caloca*. Barbara Attard explained that the Commission had reviewed the *Caloca* case in the past and that in July 2000 the Council had taken action on a request by the PRC for independent counsel at that time. The Council authorized the City Manager to meet and confer with the BPA on the Caloca appeal process and voted to allocate \$40,000 for the City to establish a *Caloca* review process. If, after the City completes meet and confer, the Commission believes that it is in need of independent counsel, and there is money remaining of the \$40,000, the Council will revisit the issue of independent counsel for the PRC. Commissioner Schlosberg asked that an item be placed on the next PRC agenda regarding independent counsel for the PRC.

Barbara Attard also explained that she, Ms. Reynoso, and Manuela Albuquerque met with City Manager Weldon Rucker regarding the City Manager (CM) review of PRC cases. Mr. Rucker expressed some openness to having some level of CM review pending completion of the *Caloca* meet and confer process. This option was not fully explored. Commissioners stated that they may want to have a meeting with the Manager to explore this possibility.

b. Scheduling Commission Workplan Planning Session—Scheduled for the June 13 meeting.

9. COMMUNICATIONS

10. ADJOURNMENT

Bennett/Ritchie (Moved/Seconded) to adjourn meeting at approximately 9:40 PM. Passed unanimously.