



**POLICE REVIEW COMMISSION
REGULAR MEETING**

PUBLIC HEARING

“Closed Hearing Procedures and Revised Regulations”

Wednesday, April 25, 2007 - 7:00 P.M.

North Berkeley Senior Center: 1901 Hearst Avenue, Berkeley

MINUTES

**1. CALL TO ORDER BY CHAIRPERSON SHARON KIDD AT 7:13 P.M.
ROLL CALL AND ATTENDANCE**

Present: Chairperson Sharon Kidd
Vice Chair Michael Sherman
Commissioner Jonathan Huang
Commissioner Jack Radisch
Commissioner Sherry Smith
Commissioner William White

Absent: Commissioner Kamau Edwards

PRC Staff: Victoria Urbi, PRC Officer
Maritza Martinez, Administrative Support

City Attorney's Office: Manuela Albuquerque and Sarah Reynoso

BPD Staff: Sgt. Juster and Lt. Greenwood

BPA Staff: Henry Wellington

2. LEGISLATIVE UPDATE: AB 1648 AND SB 1019

Chairperson Kidd reported that she and Victoria Urbi attended the State Assembly and Senate hearings at Sacramento. The Senate bill was passed by three votes. The Assembly bill introduced by Mark Leno was not voted on and it is pending amendment and recommendation.

3. PUBLIC HEARING: CLOSED HEARING PROCEDURES AND REVISED



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REGULATIONS TO CONFORM TO COURT RULING

A. Public Comment

Jack Gelender (Berkeley Copwatch): He was not aware of the public hearing on this subject. Is this the moment when public input is being asked for? He was concerned that the public would be given an opportunity to speak about this matter at other public hearings before the process is complete. He believes the PRC should be given the power to take disciplinary action.

B CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a):

Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569. [The proposed revised regulations and procedures concern matters, which are the subject of this litigation.]

The Commission did not recess into closed session to meet with its attorneys.

C. Commission Discussion of Proposed PRC Regulations to comply with the Court's decision.

Ms. Albuquerque: On February 28, Ms. Urbi provided the Commission with an outline on recommendations of the closed hearing procedures to coincide with the Court's decision.

Motion to approve the regulations as submitted to the PRC should be passed as the new regulations in light of the BPA lawsuit, so that they can be discussed further.

M/S/C (Smith/Sherman) Ayes: Kidd, Sherman, Huang, Radisch, Smith and White.

Noes: None. Abstain: None. Absent: Edwards.

Ms. Albuquerque: There is no final resolution on a piece of the case, so she advised the Commission to hold off on approving the regulations.

Comm. Radisch: He understood that the Court has ruled on what law applies, but they have not ruled on the issue of what would be a violation.

Comm. Sherman: On p. 11, #6, it states that Commissioners cannot make any public comments on complaints. He thinks this seems too restrictive.

Ms. Albuquerque: Commissioners cannot comment on individual complaints in order to protect the confidentiality of the investigation, but Commissioners may give cumulative information.

Comm. Radisch: He said, "Let's suppose... the complainant has gone to the press in advance of any complaint to the PRC and named an officer, and given a complaint which has been published through the press as facts of an incident. Then the complainant goes to the PRC and makes a formal complaint. The facts and the name of the officer have already been in the paper and we conduct a hearing. At the conclusion of that hearing, a reporter approaches us. We cannot say yes that is the incident that was in the paper?"

Ms. Albuquerque: The PRC cannot disclose any information from the complaint and cannot comment on its investigation. Only the City can comment on it under the Judge's determination. Everything written in the complaint is confidential.

Chairperson Kidd: If a subcommittee is formed to conduct an investigation on policy and procedures, are we allowed to talk to the press about the officer in a criminal case?

Ms. Albuquerque: The PRC currently can discuss policy complaints that do not involve officers. You are allowed to make recommendations on the policy without mentioning officers. If the document is public, it remains public.

Comm. Radisch: In a complaint involving an officer similar to a death-in-custody case, would I be subjecting myself individually to civil liability as a Commissioner by making a comment if the officer chose to sue me?

Ms. Albuquerque: The Commissioner would be subject to civil liability if they violate the statutory provision.

Comm. White: On p. 15, 21a, due to the confidentiality, what would the findings say?

Ms. Albuquerque: She offered to check into it and come back with a recommendation.

Chairperson Kidd: Recommends that the hearing officer portion be amended.

Comm. Radisch: It's not necessary to have staff members as part of the hearings. He suggested that the staff write the findings report subject to Commissioners' approval.

Comm. White: Agreed with the five-minute limitation on closing statement. He thinks staff should not be part of the deliberating process and that it should be limited to the commissioners.

Chairperson Kidd: She does not agree with putting a five-minute time limit. She believes in keeping the revised hearing with the three chairs and the staff as our advisor.

Comm. Huang: Recommends a provision to inform the complainant that he does have a right to publicize the issue of what the officer did to the press and to the City Council. That would be before he signs the confidentiality agreement. Second, he recommends that when the PRC establishes a date for the boards of inquiry, staff send a letter to the officer asking him to please advocate for a public hearing.

D. Action

The last motion was amended to: Motion to send back the proposed regulations to the City Attorney and to incorporate within the next draft the comments provided as well as the written comments that Bay Area Police Watch provided in principal.

M/S/C (Smith/Radisch) Motion passed unanimously. Ayes: Kidd, Sherman, Huang, Radisch, Smith and White.

Noes: None. Abstain: None. Absent: Edwards.

Motion to approve the changes related to the close session to be consistent with the regulations.

M/S/C (Sherman/Smith) Motion passed unanimously. Ayes: Kidd, Sherman, Huang, Radisch, Smith and White. Noes: None. Abstain: None. Absent: Edwards.

4. PUBLIC COMMENT

None.

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

A. Budget update: Requested to the City Manager to increase PRC budget to add an investigator to

staff. PRC has not been fully staffed for several years. A recent San Francisco audit of the Office of Citizen Complaints concluded that each investigator should have on average fifteen cases as a manageable caseload. The current PRC Investigator has about forty-seven open cases to investigate, while the PRC Officer is investigating the larger and more serious cases. The budget request was denied.

- B. Lawsuit update: The judge has not made a decision yet.
- C. Status of complaints: There are fifty-one open cases. Have increased, by approximately ten, in the last three months.
- D. Commission vacancies: Two. The mayor and Councilmember Maio have vacancies. Jim Gleich informed PRC that he was unable to serve.

6. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT (by Lt. Greenwood)

Last week, the promotion of four officers took place. Continue to have staff shortage in patrol.

Comm. White: Has a concern and recommends the Commission to read the revision of the *High Speed Chase*. Requested that we form a subcommittee to review this.

Motion to approve the formation of a subcommittee to review General Order V6 and make recommendations to the Chief.

M/S/C (White/Sherman) Ayes: Kidd, Sherman, Huang, Radisch, Smith and White.

Noes: None. Abstain: None. Absent: Edwards, Smith (left early).

7. APPROVAL OF MINUTES

March 28, 2007 PRC minutes were approved.

M/S/C (White/Radisch) Ayes: Kidd, Sherman, Huang, Radisch and White.

Noes: None. Abstain: None. Absent: Edwards, Smith (left early).

8. COMMITTEE REPORTS (For Discussion or Action)

A. Subcommittee: Draft Regulation for Investigations of First Amendment Activities. Commission update: Next meeting May 9, 2007.

B. Subcommittee: Review of BPD's Evidence Theft Issues.

Comm. White: He said the subcommittee has met several times. We had the City Auditor present at our last meeting and explained about funds the BPD is responsible for. An audit was requested on the Kent case. The subcommittee is scheduled to meet with the Chief on May 3 to discuss the case.

Comm. Radisch: He said the Commission would be reviewing the POST report.

Comm. White: He said the Chief stated that until the subcommittee made this recommendation to the full Commission, he would not move on any of the recommendations of the POST report.

Motion to approve the subcommittee's recommendation that the Commission accept the findings of the POST report and that BPD adopt the POST recommendations.

M/S/C (White/Radisch) Motion passed unanimously. Ayes: Kidd, Sherman, Huang, Radisch, Smith and White. Noes: None. Abstain: None. Absent: Edwards, Smith (left early).

9. NEW BUSINESS

A. National Association for Civilian Oversight of Law Enforcement Conference

- a. Staff update: Scheduled September 25-28, 2007. There is a copy of the announcement in the packet. The PRC can send one commissioner. Ms. Urbi recommended that the Chair go to the conference and encourages other commissioners to attend as well.

- b. Discussion: Comm. White encouraged other commissioners to use their stipends to pay for the registration fee.

Motion to approve Chairperson Kidd to attend the NACOLE conference.

M/S/C (Radisch/White) Motion passed unanimously. Ayes: Kidd, Sherman, Huang, Radisch, Smith and White. Noes: None. Abstain: None. Absent: Edwards, Smith (left early).

10. COMMUNICATIONS

11. ADJOURNMENT

Meeting was adjourned at 9:00 p.m.