



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(Approved)

Wednesday, October 11, 2017
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR LIPPMAN AT 7:13 P.M.

Present: Commissioner George Lippman (Chair)
Commissioner Gwen Allamby
Commissioner Clarence Ford
Commissioner Sahana Matthews
Commissioner George Perezvelez
Commissioner Andrea Prichett
Commissioner Terry Roberts
Commissioner Ari Yampolsky (left 9:47 p.m.)

Absent: None

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood (left 8:20 p.m.), Sgt. Sean Ross (BPA)

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 3 speakers

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of September 27, 2017, with the following corrections:

- In PRC Officer's report, Commission asked PRC Officer to write to City administration asking for explanation of why the Boalt law students project could not be added to the list of Complainant Advocates on the PRC website.**
- In Chief's report, the question re Capt. Reece concerned his photographing on Saturday, Aug. 26, not Sunday.**

- In Item #9.g., first friendly amendment, “see” should be “seek.”
- In Item #9.g., fourth friendly amendment, “PR” should be “PRC,”

Moved/Seconded (Prichett/Allamby) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Prichett, Roberts, and Yampolsky.
Noes: None Abstain: Perezvelez Absent: None

5. CHAIR’S REPORT

- Several items relevant to PRC will be on Council’s Oct. 31 agenda so may want to save that date. Items: Use of force reporting; recommendations PRC made last year concerning fair & impartial policing; role of BOIs; powers of PRC; transformation of PRC or creation of a new commission overseeing work of BPD.
- Surveillance Ordinance will be on the Council’s Nov. 14 agenda; copy of item will be in next packet.

6. PRC OFFICER’S REPORT

- No new complaints filed since the last PRC meeting.
- Maritza Martinez, PRC administrative support staff, is on vacation through Oct. 31. A part-time temporary employee, Andreana Davis, is filling in.
- An updated priority list has been distributed tonight; it shows rankings of each responding Commissioner as well as a separate list showing rankings of the group, in order..
- The Sept. 29 memo from PRC to Council (p. 43 of packet) contained an error in stating the vote was unanimous, though the vote reported was correct. Correction reflected in a second memo, dated Oct. 6, handed out tonight.
- Report on NACOLE Conference, Sept. 10 -14, was given.

7. CHIEF OF POLICE’S REPORT

- Staffing: down to 160 sworn, when should be at 176. Got double the number of applicants in most recent recruitment. Sending 2 people to Washington, D.C. to recruitment event by historically black colleges. Couple retirements and one resignation. Ofc. Castle promoted to Sgt.
- Very busy managing recent demonstrations. Re After Action reports, the one for August 27 was just released via a PRA request; the AARs for Sept. 14 and free speech week are forthcoming later this week.
- For North Bay fires, BPD has sent 12 officers up since Monday morning; anticipate continuing support at least through the weekend. Several employees live in the area and at least one has been evacuated.
- Testified last week before State Senate Judiciary Committee at hearing on combatting hate while protecting the 1st Amendment. Chief addressed challenges of policing in an emergent dynamic of demonstrations.
- Attending IACP conference in a week from next weekend; George Lippman also attending.

-- Body Worn Cameras: Expect to go live in late November. Hardware such as cradles and mounting, Ethernet cables, to be installed. Software: will use Evidence.com, Axon's cloud-based storage system. IT installing app on Dept.-issued iPhones to help manage.

Questions:

-- Chief earlier committed to bringing body camera system in for demo; when would that be? Will aim for December 13 meeting.

-- How is beat configuration working? Challenging in light of staffing shortages.

-- Re Capt. Reece photographing on Aug. 26, what is policy on whether that is allowable? Any policy or training bulletin that prevents officer from using private device for personal use? When officer takes photos on duty, do they become public documents? Don't know. Will report back.

-- Meet & confer over body cams scheduled yet? No.

-- Further details on recent death of woman at homeless encampment? Death investigation is open and awaiting coroner's report.

-- Length of body camera training? Axon here starting Nov. 28 for 4 days, and they will train the trainers, who will do 7 – 8 days of training.

-- Will After-Action Reports be public documents? Yes.

-- Re the Center for Policing Equity, has their request for 2016 data been provided? Yes. Climate survey will be postponed, however.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

a. Fair & Impartial Policing Subcommittee

Meeting tomorrow. Into last substantial piece of report, the Recommendations section. Hope to finish within couple meetings and bring to Commission in Dec.

b. General Orders C-64, etc. Subcommittee

PRC Officer to facilitate scheduling next meeting.

c. Homeless Encampment Subcommittee

Members responded to Doodle poll but heard nothing; PRC Officer to follow up.

d. June 20, 2017 Subcommittee (Review of BPD Response at City Council meeting)

Met on Oct. 4 and took testimony from about 12 people for 2 – 2-1/2 hours. Have photos and videos to view also. Next meeting Nov. 8 [Nov. 7] at 7 p.m. Lots of material to review and may need two more meetings.

e. Re-establish Mutual Aid Subcommittee and appoint additional members

Still in need of members in addition to Comm. Matthews; need to make recommendations by December.

9. OLD BUSINESS (discussion & action)

- a. Continue reviewing draft of a revised General Order W-1, Public Recording of Law Enforcement Activity (Right to Watch).

Motion to adopt the proposed Right to Watch policy starting on page 17 of the packet.

Moved/Seconded (Prichett/Lippman)

Amendments approved by General Consent:

Revise beginning of the first sentence to read, “The purpose of this General Order is to provide policy and procedural guidance regarding the right of members of the public to observe, [etc.]”

Add, at the end of the first paragraph under Section I. POLICY: “Members of this department will not prohibit or intentionally interfere with such lawful recordings.”

Insert as a second paragraph under Section I. POLICY: “Officers shall exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties”; and, in the now third paragraph in that section, change “should” to “shall.”

Under Section II. PROCEDURES, Subsection 2, revise the first sentence to read: “Members of the public also have the right to communicate with detained person, provided:”

Under Section II. PROCEDURES, Subsection 3, revise the first sentence to read: “Members of the public are allowed to approach:”

Under Section II. PROCEDURES, Subsection 3, add a last paragraph following subsection 3b. that reads: Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).

Under Section II. PROCEDURES, delete subsections 5. and 6.

Motion to amend Section II. PROCEDURES, by adding a new Subsection 5 that reads: “An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime.”

Moved/Seconded (Matthews/Lippman) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Roberts, and Yampolsky.
Noes: None Abstain: Prichett Absent: None

Motion to adopt the proposed Right to Watch policy starting on page 17 of the packet, as amended, Carried

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett Roberts, and Yampolsky.

Noes: None Abstain: None Absent: None

- b. Consider amendments to PRC regulations regarding challenge to a commissioner seated on a BOI.
(Discussion to be continued to the next meeting.)
- c. Observations of PRC Commissioners who attended Urban Shield exercise Sept. 8 or 9.
(Item postponed to the next meeting.)
- d. Proposal for BPD Accountability Plan, including professional development/training of BPD officers, department budget, etc.
(Item postponed to the next meeting.)
- e. Review Council revision of policy banning use of pepper spray in crowd control and resulting changes to General Order U-2; and review response, if any, from Council and staff to PRC's letter of on lack of consultation with the PRC on this and other policy changes.
(Item postponed to the next meeting.)
- f. Completion and release of After-Action Reports to the PRC, and possible request to the City Council or City Manager; review change to General Order C-64.
(Item postponed to the next meeting.)
- g. Rescind Standing Rule prohibiting non-Berkeley residents from sitting as community members on PRC subcommittees.
(Item postponed to the next meeting.)
- h. Review and approval of 2016 Annual Report.
(Item postponed to the next meeting.)
- i. Police Department's timeline for implementation of body-worn camera program, including finalization of General Order governing use and access to video.
(Item postponed to the next meeting.)

10. NEW BUSINESS (discussion & action)

- a. Understand and address constraints on publicizing Boalt Police Review Project (UC Berkeley Law School student legal services project).

Motion that the PRC supports the efforts of the Boalt Law students to represent complainants, and the inclusion of their project on the PRC's website page listing Complainant Advocates; and communicating this to

the City Manager, asking her to authorize the PRC Officer to add their name to the PRC website.

Moved/Seconded (Prichett/Allamby)

Friendly amendment: That the letter be cc'd to the Mayor and City Council.

Moved by Lippman; accepted by Prichett and Allamby

Motion, as amended, Carried

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts, and Yampolsky.

Noes: None

Abstain: None

Absent: None

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

(Heard following Item #15)

There was 1 speaker.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. CONSIDER REQUEST FOR LATE FILING OF COMPLAINT #2428

Motion that good cause exists to accept the late filing of Complaint #2428.

Moved/Seconded (Prichett/Allamby) **Motion Carried**

Ayes: Allamby, Ford, Lippman, Matthews, Perezvelez, Prichett, Roberts.

Noes: None

Abstain: None

Absent: Yampolsky

14. STATUS OF REPORT OF INVESTIGATION IN CASE #2420

End of Closed Session

15. ANNOUNCEMENT OF CLOSED SESSION ACTION

The vote to accept late-filed Complaint #2428 was announced.

16. ADJOURNMENT