



Police Review Commission (PRC)

POLICE REVIEW COMMISSION
SPECIAL MEETING
MINUTES
(approved)

August 12, 2015
6:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR BERNSTEIN AT 6:12 P.M.

Present: Commissioner Benjamin Bartlett
Commissioner Alison Bernstein (Chair)
Commissioner George Lippman
Commissioner Terry Roberts
Commissioner Ann Rogers
Commissioner Bulmaro Vicente
Commissioner Ari Yampolsky

Absent: Commissioners George Perezvelez, Michael Sherman

PRC Staff: Katherine J. Lee, PRC Officer;

BPD Staff: Capt. Dave Frankel, Lt. Dan Montgomery, Sgt. Spencer Fomby (all present 6:55 p.m. – 8:40 p.m.)

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 7 speakers.

4. APPROVAL OF MINUTES

Motion to approve minutes of July 22, 2015 *Regular* meeting.

Moved/Seconded (Bartlett/Roberts) **Motion Carried by general consent**

Motion to approve minutes of July 29, 2015 *Special* meeting.

Moved/Seconded (Vicente/Rogers) **Motion Carried by general consent**

5. CHIEF OF POLICE'S REPORT

None.

6. OLD BUSINESS (discussion and action)

- a. Policy investigation regarding the events of December 6, 7, and 8, 2014, and Council directive for an investigation into the events of December 6, as both are more fully identified in the regular meeting agenda of February 25, 2015; and including review of mutual aid practices and policies.
- i) Review and discuss factual findings. (Changes noted below are to the document "Compilation of Commissioner Factual Findings by PRC Staff With Commissioner comment – Draft 8-10-2015.")

Motion to replace the last sentence of Paragraph 5 with the following: "BPD's strategies and tactics unreasonably focused on this small group of agitators and vandals rather than facilitating a peaceful protest."

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

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, and Vicente

Noes: None Abstain: Yampolsky Absent: Perezvelez,
Sherman

By general consent, the Commission agreed to:

Delete "Factual" from the title and first paragraph.

Delete all but the first and last sentences of footnote 4, p.2.

In paragraph 7, second sentence, delete "Under the current BPD policy," and revise the footnote to specifically refer to the state OES guide cited in the BPD report.

Revise the last sentence of paragraph 10 to state that the safety zone is one arm's length "plus the length of a baton."

Affirm or correct references to "BPD" or to "police" based on BPD's confirmation.

Approve the last sentence of paragraph 15 (lines 7-8, before the additional language approved below).

Have staff merge and revise paragraphs 13, 17, and 18.

Have staff to revise the document to eliminate redundancies and tighten up the language.

Motion to revise the second sentence of paragraph 11 to read, "At this time and as the crowd approached, the Commission received no evidence that any member of the police department acted aggressively or was confrontational."

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

Ayes: Bartlett, Lippman, Roberts, Rogers, and Vicente

Noes: Bernstein Abstain: Yampolsky Absent: Perezvelez,
Sherman

Motion to add, at the end of paragraph 15, “BPD reports using smoke canisters at this location.”

Moved/Seconded (Rogers/Vicente) **Motion Carried**

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, and Vicente

Noes: None Abstain: Yampolsky Absent: Perezvelez,
Sherman

(The Commission discussed Item 6.a.ii following Item 6.a.iii.)

- iii) Continue review and approval of, or changes to, BPD recommendations in its report of the December 6 & 7, 2014 events.

Motion to adopt, as an alternative to BPD Recommendation #15, “The PRC recommends that the current City policy regarding use of helicopters should be retained.”

Moved/Seconded (Vicente/Rogers) **Motion Carried**

Ayes: Bartlett, Bernstein, Lippman, Rogers, and Vicente

Noes: Roberts Abstain: Yampolsky Absent: Perezvelez,
Sherman

(The Commission discussed item 7.a. between discussions on BPD Recommendation #19.)

Motion to adopt, as an alternative to BPD Recommendation # 19, “The PRC recommends that BPD’s policy regarding the use of less-lethal munitions be revised to reflect that less-lethal weapons should only be direct-fired at a specific target, may never be used indiscriminately against a crowd or group of persons, and may be used only against a specific individual engaged in conduct that poses an immediate threat of loss of life or serious bodily injury.”

Moved/Seconded (Lippman/Vicente)

Friendly amendment to add: “All less-lethal operators, including mutual aid responders, should be briefed regarding the rules of engagement for the specific mission prior to deployment. Command should review the use of force with all operators, including mutual aid responders, as it relates to accomplishing mission objectives prior to deployment.”

(Moved by Bernstein; Accepted by Lippman)

Motion, as amended, Carried

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, and Vicente

Noes: None Abstain: Yampolsky Absent: Perezvelez,
Sherman

Motion to adopt, as an alternative to BPD Recommendation #21, “The numerous reports from citizens of being struck by batons as they were engaged in peaceful, lawful demonstrations are a cause of significant

concern. BPD, in conjunction with the PRC, should review its policy regarding the use of batons during crowd control and crowd management situations. Particular attention should be given to the kind of authorized baton strikes, to include the use of jabs and rakes. Overhead strikes should be prohibited in crowd control and crowd management.”

Moved/Seconded (Roberts/Bartlett) **Motion Carried**

Ayes: Bartlett, Bernstein, Lippman, Roberts, Rogers, Vicente, and Yampolsky.

Noes: None Abstain: None Absent: Perezvelez Sherman

- ii) Further discuss structure of report and work plan for completing it.

By general consent, the Commission agreed to:

Have the PRC Officer write to the Council to explain that despite working diligently, due to the scope of the investigation into the December 2014 events, the PRC did not complete the report it in the 6 months requested, and will aim for completing it later in 2015 (possibly the December 1 Council meeting, contingent on confirming that date).

Schedule a Special Meeting on October 21, 2015, for purposes of continuing its work on the investigative report.

- b. Report on National Night Out.

(This was the last item discussed before adjournment.)

Commissioners Lippman, Vicente, Rogers, Bartlett and Roberts reported on their experiences on National Night Out.

7. NEW BUSINESS (discussion and action)

- a. Officer protection during responses to armed suspects.

Motion to reaffirm PRC's support of last year for the BPD acquisition of a van-type bullet-proof vehicle.

Moved/Seconded (Roberts/Bartlett)

Motion to table the main motion.

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

Ayes: Lippman, Roberts, Rogers, and Vicente.

Noes: Bartlett, Bernstein Abstain: Yampolsky

Absent: Perezvelez, Sherman

- b. Status of revisions to Regulations for Handling Complaints Against Members of the Police Department.

(Carried over to next meeting.)

- c. Disclosure of full Suspicious Activity Reports by BPD.
(Carried over to next meeting.)

8. CHAIR'S REPORT

None.

9. PRC OFFICER'S REPORT

Status of complaints: A BOI was held yesterday; special thanks to Commissioners Lippman, Perezvelez and Roberts, as the hearing lasted from 3:00 p.m. to almost 9:00 p.m. The officer in another BOI who went on emergency leave has returned and the continuation of the BOI will be rescheduled. Two new complaints were filed this week, the first since late April.

The Council referred the issue of body-worn cameras to the PRC at the same time the investigation was referred; the PRC Officer will include this topic in her letter to the Council regarding the delay in the investigation.

With the change of City staff management, PRC Officer will now be reporting to Interim Deputy City Manager Gil Dong.

This week's packet contains a copy of the Standing Rules. They have not been changed substantively but were reprinted due to an error in page numbering.

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

11. PUBLIC COMMENT

No members of the public spoke, but Commissioner Vicente announced his impending resignation

12. ADJOURNMENT

Motion to adjourn the meeting carried by general consent.

Meeting was **adjourned** at 9:45 p.m.